MacCrellish & Quigley, Printers, 16 East State Street, Trenton.

NEW JERSEY

Court of Errors and Appeals.

Between

SPENCER M. ALPAUGH ET AL.,
Appellants,

and

WILLIAM WOOD ET AL.,
Respondents.

On Appeal.

BRIEF FOR RESPONDENTS.

The agreement (*p. 360*) between the parties is admitted, and service under it by the respondents is also admitted, and, although not a copartnership, yet respondents had such an interest in the profits as entitled them to an account.

4 C. E. Green 281, Hargrave v. *Conroy, and cases cited.*

A fiduciary relation existed between the parties, and a duty rested upon the appellants to render an account.

It was the only mode of ascertaining the amount of pay 10 for respondents' services under the agreement.

3 Pomeroy's Eq. Jur. 473 (§ *1421*), *note and cases.*
2 Equity Leading Cases 391, 429.
Adams' Equity, 239.

If share of profits of respondents did not amount to $2,000 a year to each, then they are entitled to that sum, as guaranteed by agreement.

The weekly compensation provided by agreement was paid (*p. 57*) up to the date of termination of agreement, in July, 1886, although respondents were discharged from work in March previous.

The appellants set up that respondents made misrepresentations as to their abilities at time of execution of agreement. *Page 6, line 8*, and *on page 7, line 1*, set out their deficiencies.

Why *set up?* and *how* pertinent *in* the case? The contract between the parties was written. Presumed to contain the whole agreement. They seek to engraft something additional, and as that cannot be done, set up a fraud.

5 Stewart 222, Parker v. *Jameson.*
5 Stewart 233, Vansyckle v. *Dalrymple.*

The only legitimate effect such inquiry can have is to excuse or justify the discharge of respondents before termination of agreement.

If appellants were misled, on discovery of fraud they might have terminated the agreement.

But acceptance of their *services* made appellants liable for payment up to date of discharge—that would be *according to profits*, and therefore an account for that would be necessary.

Wood on Master and Servant, 309–314, and cases cited.

And as defense does not overthrow the whole claim of respondents, on their own showing, and no cross-bill or answer in nature thereof has been filed, the appellants' claim must be overruled.

5 Stewart 225, Parker v. *Hartt.*

Representations to be available in equity must not only be false, and material, but the approximate and immediate cause of the transaction.

A representation which merely amounts to a statement of opinion, judgment, probability or expectation—or is vague and indefinite in its nature and terms, goes for nothing. Mere exaggeration is not misrepresentation—and statements

as to profits and prospects of a company are only expressions of opinion.

Kerr on Fraud, 73–75–82, &c., and cases in notes.

Onus probandi being on the appellants to sustain the issue made by their answer, what is the proof?

Magowan is the main witness of the charge.

He negotiated the contract.

His testimony is, page 10–11, &c.

Appellants had a pottery, in which the ware previously manufactured by the Coxons had proved worthless. They sought for persons to run their pottery. Went to see James Barlow, and then Wood.

Page 13. Terms were agreed upon.

And an agreement to be drawn by respondents.

Page 15. They met the next day, Alpaugh being present. *Agreement was read.* Special attention directed to the $2,000 profit clause; refused to accept employment without that clause.

Page 17. They executed the agreement.

Page 47. Knew Wood was a superintendent of a pottery.

Page 45. Heard of Barlow as manager of Mercer Pottery

Mr. Alpaugh says (*p. 97*), after talking, Magowan read an agreement Wood handed to him. Objection was made to the *guarantee*, but finally the agreement, as drawn, was signed.

Page 112. He knew Barlow by reputation as a good modeler, and was satisfied he was just the *man they wanted.*

On the other hand, see evidence of

William Wood (*p. 159*). Magowan came to him and said they had been trying to secure the services of Barlow, but he was under agreement with James Moses, who refused to release him. Said (*p. 160*) he had been inquiring and thought I was just the man they wanted with Barlow; stated their offer to Barlow, who had declined—and offered him the same—he wanted time to think of it. The next night Magowan *called again*—proposition was declined. Then Magowan dilated in grandiloquent language (*p. 161*) of the business prospects and profits he would secure, and

said (*p. 162, line 20,*) he would guarantee, if he would come, that profits should be not less than $2,000 a year.

Page 163. Said they must have Barlow; that they started to get *him*, and must have him; he said, you know it will be a big thing—as the Mercer Pottery while he has been in their employ, has made the best reputation, and it was known that Barlow was the modeler, &c., and if we can get Barlow it will give us the benefit of *all the reputation* that it has taken Mercer Pottery years to attain. Authorized him to make same offer to Barlow—and to tell Barlow that if Moses sues him they will pay all law expenses and losses incurred by Barlow in the suit—and is asked if he would put that in writing; he says yes, and I could have such a paper drawn and bring it with the other.

Page 164. Magowan came to Wood's house on Sunday and saw Barlow and Wood, and arrangement was agreed upon, and says, Magowan never asked a question as to *ability to increase production*, grade or profits of pottery.

But Wood said to Magowan, "we are strangers, how do you know I will suit you?" Magowan said (*p. 165*) that from inquiries he was perfectly satisfied to run the risk; "you are not a stranger in Trenton; it is very easy to get at your reputation." He never, at any time, asked any guarantee from me.

Page 165, line 10. They met at Rubber Works. Agreements were read. Magowan said they were drawn up according to understanding, and were quite right, and signed them. Nothing said then about guarantees or representations. At that time the agreement was signed to indemnity Barlow. (*Exhibit W. 3, p. 363. See.*)

Then James Barlow (*p. 273*) tells how he came to execute the agreement. A meeting was arranged with Magowan, through Mr. Sterling, and he met appellants at Sterling's (*line 23*); told him they had been making inquiries about him, and he had been recommended to them as the best man they could get. And made him an offer. Asked him his duties at Moses' pottery, what wages he got. They made him an offer (*p. 274, line 10*), which he rejected, and they asked him to get a *release from Moses.* He asked Moses, and he would not release him. So reported. Magowan

still pressed him. And repeatedly saw him. (*line 25.*) Then offered him $60 a week and 10 per cent. profits. Told him Moses threatened suit if he left. He then told me he would stand between us in case of suit.

After *declining* his *proposition* (*p. 275*), sent Sterling to him. Then Wood came to see me, and led to meeting on Sunday, in which terms were made and *accepted.*

Page 276. Magowan said they would need two managers. My time would be taken up in modeling.

Page 277. We were to meet the *next* day, to sign agreements. Magowan pronounced them right.

Page 278, line 25. Says he was never asked as to his abilities, or if he could make any particular kind of ware, and did not make any representations about the plant.

All the above was more strongly stated on cross-examination (*p. 338*), &c.

Then Robert Sterling says. (*p. 284.*)

He was asked by Magowan to arrange a meeting with Barlow. He *inquired about Barlow.* He carried his message. Told him (Magowan) about Wood. And where he would probably find him. And Magowan said he would try and find him.

It is easy to agree with the Chancellor, from this testimony, that the appellants totally failed in their proofs.

The appellants had a pottery which had been operated unsuccessfully. They wanted a manager. Must have one. They made inquiries for one. Were informed of Mr. Barlow, a modeler in a successful pottery. Making just the kind of ware they wanted. With reputation established. An interview with him is sought. Repeated interviews. Offers made and declined because he was under a contract with Moses. Advised to ask for release, and that was refused. Suit threatened if he left. Then increases offer, and to stand between him and his principal.

Yet Magowan swears he knew nothing about him, and only made inquiry *in a general way.* (*p. 46, line 1.*)

Sterling, a disinterested witness, confirms the truth of Barlow's evidence. Alpaugh, himself, admitted it. (*pp. 112, l. 20.*) It is evident that Magowan pressed Barlow into his service and *enticed him to leave his employer by offer of high*

wages and to back him in a lawsuit. That evidence (*p. 363, Ex. W 3,*) clearly supports respondents.

That men would agree to execute such a paper shows the extremes resorted to by appellants.

So Magowan says he met Wood in the street and he courted an interview. (*p. 46, line 15.*)

Wood says he came to his house, and Sterling says he told Magowan "the jig was up with Barlow"—he had consulted his intimate friend. (*p. 236, line 25.*) When asked who friend was, was told, and he was a manager of a pottery, and thus sought him out (*p 159*) and made him an offer and induced him to get Barlow, as their works were large and they needed two managers. We thus see how determined he was to get Barlow, somehow, at any price. He was after those designs and the ware manufactured by Moses—the secrets of another. Money was no object.

And although he thus pressed these men into their service by unusual and persistent methods, he says (*p. 48, line 38,*) it required no urging to induce them to enter their service. The flattering prospects of big profits and a guarantee of $5,000 a year sure, and Barlow indemnified, were necessary to secure them—all *unusual and extraordinary*, and yet that is said not to be urging them into their service.

Respondents had these agreements drawn and presented them at meeting next day. There is a difference as to what took place. Appellants say that representations were again made as to ability to make certain wares; that Alpaugh objected to the agreement of guarantee.

Respondents say the agreement was drawn correct. The indemnification paper was signed at same time.

When we recall the extraordinary efforts to get these men into their service, and flattering offers of future rewards, is it likely that appellants were influenced by any representations of respondents as to manufacture of ware, and even give absolute guarantees against crazure, as claimed?

Is it likely that men who had never been on the plant would boast of what they could do and how much profit they could make?

Is it likely that they would be so careful to secure $2,000 a year profits beyond contingency, if sure of making the

enormous profits said to have been claimed by them. If respondents made the guarantees alleged as inducement to the agreement, why was it not made part of the contract? Would not Magowan have said, you make us guarantee you $2,000 a year profit; you guarantee to us what you say you can do? A much more important item, as $50,000 represented profits is to $4,000.

Is not the absence of such a clause in the agreement, in connection with the positive evidence of Wood and Barlow that there were none, conclusive proof that they were neither asked or given, but that appellants relied on the information they had learned of their abilities.

The very insertion of that guarantee of profits is a strong intimation that there might not be profits to the amount as claimed, and shows there was no guarantee of $50,000 or more. All statements of that kind were by Magowan to induce the respondents to enter their service. Respondents took the precaution of getting a guarantee of profits instead of talk.

Magowan states (*p. 14, line 25*), Wood showed him piece of vitrified china. That was denied by both respondents, who said they hadn't such ware in their possession. (*p. 178, line 10; p. 312, line 15.*)

Many other assertions of appellants are as emphatically denied by respondents.

Submit that the allegations of misrepresentations as to the procuring of the agreement are unfounded. Appellants were not thereby led to make the contract.

The *remarks* of the Vice-Chancellor *on this subject* (*p. 380*) are *quite appropriate and conclusive.*

But the appellants resist an accounting by setting up that respondents mismanaged their pottery; that by unskillful management and misconduct they suffered *great loss*, and there *were no profits.*

But the proofs of it are wanting.

The answer *charges false entries* (*p. 7, line 21,*) and pretended hire of men.

But there is not a *syllable* of proof of it.

The only evidence is, Magowan says Finney was paid exorbitant wages, also Kirkham (*a bad man*). (*p. 41, line 30; p. 42, line 1.*)

But Pope says Finney was a good man. (*p. 247, line 29.*)

Wood says Finney was a good man. (*p. 201, line 30.*)

Wood says Kirkham a good man. (*p. 201, line 1, &c.*)

He was a sober, good man.

Kirkham, himself, says (*p. 263, line 4.*) Magowan, himself, ~~opened~~ agreed upon his compensation, and it was *put in writing.*

Barlow says (*p. 282*) Kirkham was a good man.

Taft and Brunt say the same thing. (*pp. 259–298.*)

Nor was there any concealment.

Magowan says (*p. 23, line 34,*) bisque ware was secreted.

Mulford says (*p. 34, line 18,*) glossed ware, large dishes, was secreted.

Brunt says (*p. 297, line 21*), never saw any ware concealed, but soft-fired ware was often left in saggers to await another firing.

Wood says that showed good management to retain in saggers.

There was no secretion. (*p. 172.*)

Barlow explains it: Dishes were *setters*, and used constantly; it was really good management. (*p. 319, line 30.*)

Using instead of throwing away that kind of ware.

Magowan is the witness on every point for appellants.

But his statements are so *erroneous in fact.*

So *unsupported* by other evidence.

So *unreasonable* in themselves, in view of all the circumstances of this case.

So flatly contradicted by written evidence that his statements on the other remaining question in this cause are entitled to little weight.

Was there mismanagement—negligent management on part of respondents of appellants' pottery?

Appellants claim there was (1) lack of skill; (2) unskillful mixing; (3) unskillful firing of kilns; (4) unusual large number of "thirds."

That the manufacture of printed ware was a failure is not denied, but the losses have been grossly exaggerated, and it

should be noticed that appellants have not shown how much was manufactured or sold, or the actual cost of the experiment.

Their anticipated profits have been set forth.

But what was the cause of the failure?

Magowan said wrong mixtures and bad firing. Donoher said they were short-fired, which caused crazing. Alpaugh said they were easy-fired, and they stopped the manufacture because Wood said it couldn't be made on the body they were using.

These are the opinions of persons who say they knew nothing about the practical part of the business, although, as Vice-Chancellor (*p. 377*) remarks, that Magowan testified he was thoroughly acquainted with the manufacture and had paid a great deal of attention to it. (*p. 19.*)

But we have the explanation of the managers themselves, who *explain everything.*

Wood says (*p. 180, line 30, &c.*): It was experimental; we made samples at appellants' request; told them the body was not sufficient; at their request, had a new kiln built; was then ordered to send goods through; we practically refused; they threatened to get another man to do it; Wood actually consulted Mr. Moses and his lawyer whether he was bound to obey their orders against his own judgment and protest; the goods crazed, because the body was not suitable; was *not caused by mixings, because they were the same* as for Imperial China.

Barlow says (*p. 317*) that he heard Wood tell both Alpaugh and Magowan that they ought to let him use his own judgment about the body. That Alpaugh asked Wood why he was not sending the printed ware through in larger quantities. Wood says, "you know the reasons (*p. 318*), because I want to know more about it; it's only an experiment." Alpaugh said to Wood, "we have had enough of that run through to know as much as we ever will know. We have large orders for it, and must fill them. If you hesitate, we shall hire another man to do it." Wood said, "I will give up my position rather than be compelled to send ware through against my judgment." Afterwards Alpaugh said we release him from all responsibility, &c.

Foskit says (*p. 293, line 25*), had to rush goods through.

Donoher admitted (*p. 83, line 21*) that an order was hurried up. He had pitched in and taken orders on the samples, without stock. He knew that producing samples was a different thing from making in stock. And the firm, knowing all the difficulties and uncertainties, sent out agents to take orders for ware they had just commenced to manufacture. Ware that they had not been accustomed to make, and not before made in this country. (*p. 31, line 25.*)

Now, that was not negligence of managers.

The mixings were as they had been. No defect there. They made Imperial China satisfactory.

Appellants wanted Hotel China Ware with same white body, and Wood tried to make it. Used his best judgment and skill. His judgment was set aside. And because some of the ware was defective and manufacture of that particular ware failed, the managers are asked to be made responsible for losses.

The *proofs show* that the firing of goods, and kiln work was all good, if not superior.

Losses were no more than ordinary in potteries. Soft firing in all potteries. Rather less than usual, under this management of respondents.

The results have been grossly exaggerated. The whole production of this class of goods did not exceed $25,000. Wood says but a small proportion was returned and refired, and again shipped.

If appellants held respondents responsible, they would have kept accurate record of all this ware, but none are shown. And it was never claimed of respondents that they were held responsible. Nor any bill of losses rendered. Nor any deduction therefor *from their wages;* although their management and services were *continued more than a year subsequently.* Nothing said until this suit was brought.

Page 32. Magowan says *the outlay* was large. $3,000 for copper engravings. *New saggers.* $600 for thimbles. A new kiln, $2,500. All worthless.

Foskit says (*p. 290, line 5*), they used the *plates and engravings* after Wood and Barlow had left the pottery.

Barlow says the thimbles or pins were used in pottery up to the time he left (*p. 316, line 20*), &c. So were *copper plates.* And the *kiln* was built before starting that particular kind of ware.

Wood says the kiln was useful. And Magowan ordered it built. (*p. 181, line 15.*) This is a sample of appellants' exaggerated statements. For the fitting up of rooms, stenographers, typewriters, &c., managers had no control over, and were not responsible, but the cost was paid for out of the profit of rest of the business, which they had an interest in.

The actual loss *was, in reality, small.* Wood says expense of refiring was not over 5 per cent., and there were not over $25,000 worth of that Hotel printed ware manufactured.

Then there was but a small portion refired. So says Barlow, and Kirkham, and Wood.

Magowan said (*p. 25, line 12*) he saw three half kilns of defective firing in one week, and thirty *times afterwards.*

Brunt says (*p. 297, line 30, &c.*) it was not so, and could not be; it would bring any potter to a stand-still.

Kirkham says (*p. 264*) he knew of all ware refired, except one kiln, when they had bad coal; not over one-third of a kiln altogether.

Wood says the same thing (*p. 170, line 15*), that it was a *ridiculous statement.* Hadn't half a kiln all the time they were managers.

This shows the *tendency of appellants to overstate and exaggerate everything.*

As to *Vitrified China*, the *same remarks apply.* Appellants say they got up advertisements, cards, and took orders, and didn't fill a single order; goods came out in bad shape, new saggers required, and $5,000 was cost of the *experiment.*

Donoher says he cautioned the firm against being oversanguine, and Alpaugh says, the entire experiment was a loss. (*p. 109.*)

Wood says (*p. 177,*) Donoher requested him to make some samples. Did so, and on strength of them he took orders; wanted him to make that ware; told them he couldn't make it with *another kind* of ware; the clay would get mixed and

spoiled. Magowan said (*p. 179*) we have taken orders, have issued circulars, &c., we must go on and make it—insisted I should make it. Told Magowan it could not be made without separate shops, and on consultation they decided to abandon it rather than build new shops; says, we bought *no new saggers*, and whole expenditure was about $200, and for that they had a full equivalent

Barlow confirms it. (*p. 312.*) Knew the difficulty the Greenwood Pottery had in making that kind of ware and they dropped one kind. He told Magowan to make it successful would require new shops, and Magowan declined to build them—as scraps would get mixed. Says there was *no loss*, as shapes and models (*p. 314*) were used for Imperial China, while expense was not over $250.

Never guaranteed the ware to be a success.

Brunt says (*p. 299*) there were no saggers special made for it. Little loss in the experiment. The ware made was worth all the cost. Says the Imperial China clay and Vitrified ware clay were so near alike (*p. 300, line 32,*) that they would get mixed; it was good ware if made separate.

So here we have Magowan's *exaggerations*— an exaggerated statement of losses. In fact the loss was slight—and after all it was the firm's experiment—which would have been successful if they had provided the shops for it; but abandoned it because managers said it could not be made as they were situated. Magowan made misstatements as to saggers, losses, reason for giving up experiment. On the other hand, we see the care and anxiety of managers to keep proper control of their manufactures, instead of going into new and outside productions. The experiment was without their approval, and did not fail by reason of anything they did.

So with *Bone China.* The last experiment. Magowan says managers claimed to be able to make it. It was Mr. Donoher's suggestion; he had then taken an interest in the firm, and that, too, *after the failure in the other new line of goods.*

Magowan says managers produced samples, and said they could make it. (*p. 30.*) Told them to go ahead, and they commenced to take orders for it without production as a

manufacture. Now that ware was a pet of Donoher. (*p. 82, line 30.*) He suggested it. (*p. 68, line 20.*) He says it was an experiment. He furnished shapes, &c.

Alpaugh says the loss was $2,500 (*p. 110, line 25*); includes a kiln.

Wood gives *a very different story.* (*p. 193.*) At Donoher's request he made samples. Brunt, their foreman, had experience in that line Magowan told him to make a little. Says it was a success—so much admired they had to lock it up (*p. 194, line 20*); it was in process of manufacture at the time they left the pottery; they expected to continue it and complete French's order, taken by Donoher.

He challenged the world to produce better. (*p. 195*) They used the regular saggers; no new kiln was built; not over $100 paid out for labor.

Barlow says (*p. 320*), at request of Alpaugh he made models. They wanted something to compete with Brewer's *Beleek ware.*

The proprietors were pleased with result, and the ware was being made when they left pottery.

Brunt says (*p. 301*), Bone China was not a failure. He had had experience in that line; quality of goods was equal to any. I worked it up until I left, and then we had a china dinner service nearly completed; made for Alpaugh, and believes (*p. 302*) the only china dinner set ever made in America; says there were no special saggers; ~~never~~ were more required.

So the proofs of appellants to prove anything unskillful on part of managers *on this head entirely fails.*

Expenses *exaggerated*, results *misstated*, and managers doing everything to insure success of pottery; are unfairly charged with negligence, and attempting to do what they could not perform.

The other subject of complaint is Imperial *China.* That was the main article of manufacture, and the ware that *was expected to be made when these managers made their agreement.*

Magowan says the goods didn't come out as represented. character of ware was very bad; it crazed; there was bad firing, and large quantities were refired; $15,000 or $20,000 of ware defectively fired; would exceed $15,000 if they had

kept any record; attention was called to it six months after they had been there, and gave them notice to leave, and again in eighteen months. (*p. 42, line 38; p. 43, line 29.*)

Donoher has but little to say about Imperial China. Does say it was the regular grade of goods manufactured. (*p. 84, line 35.*)

Alpaugh says (*p. 101*) this was the goods Wood and Barlow said they could make, and didn't craze. The first year (*p. 102*) they had complaint of crazed goods. Came back in little lots. Went right on manufacturing it.

Wood honestly says they had some crazed goods. All potteries do. Had *some soft fired.* Always is, as all goods cannot be evenly fired.

Barlow says (*p. 231*) never represented that ware should never craze; you might as well guarantee against breakage.

Wood says their ware had good reputation. Least liable to craze of any pottery. And they had less soft ware than usual. And never had one-half a kiln of that ware. They manufactured Imperial China from the beginning, as soon as they could get models, until they left, in March, 1886. (*p. 170.*) Alpaugh said (*p. 117*) they had the reputation, on the road, of making the most durable ware, and least liable to craze, of any pottery. Says (*p. 175*) at first drawing of kiln, Alpaugh and Magowan were very much pleased.

Had no knowledge of any complaints of crazing. They had a very small quantity of Imperial China crazed, in proportion to the amount of goods made. There were *complaints of old Coxon ware*, and they came in for some time. (*p. 176.*) That ware returned was not kept separate from their own ware. Says (*p. 177*) our success with Imperial China was so great, and gave so good satisfaction, that Magowan thought that we could run the pottery at its full capacity on Imperial China. We stopped making Granite and C. C. Ware because of success of Imperial China.

Exhibit C 12, page 370, is a strong confirmation of this evidence. Written by *appellants* in August, 1884. They wrote to an agent of intention to devote their whole attention to the production of Imperial China. And to push sale of those goods.

Wood says the Imperial China was not made for hotel use. (*p. 192.*) Alpaugh knew it. Was told he was cheating the trade when he sold it for that purpose. And appellants *now* complain of their own mistake, and attempt to hold managers responsible.

Barlow says (*p. 280, line 36*), Imperial China gave satisfaction. Never heard any complaints. Crazed very little. (*p. 281.*) Alpaugh and Donoher both said their ware had the best reputation in America. (*p. 323, line 20.*) Says appellants never complained of the work being improperly or negligently performed. But the contrary. (*p. 325.*) The Imperial China was made from same body Moses used. (*p. 344.*) Appellants wanted him to make the same kind of ware. They wanted (*p. 279*) ware as near like Moses' they durst go. There were no complaints of it, but praise. (*p. 345.*)

This evidence of respondents is strongly supported by disinterested witnesses.

Jesse Dean says their ware was as good as any other *makes.* (*p. 249.*) No more crazing than others. All will craze to some extent.

John Wigley says this ware was as good as most ware. Very little crazed. Thought it was the nicest they *handled.* (*p. 252.*)

Wm. Tutler says (*p. 253*), the ware was as good as anybody's. In January, 1886, he applied for a situation to Alpaugh. If they wanted an overlooker. He said, No. Were satisfied with Wood. He seemed to be *running it all right.* He was satisfactory.

Wm. H. Beable says he was appellants' traveling salesman. (*p. 255.*) Their ware gave general satisfaction, Imperial China.

Louis Taft says, worked two years for Empire Pottery, at firing. The firing would compare with any. The Imperial China (*p. 259*) came out *excellent.*

James Kirkham says (*p. 266*) Alpaugh said the ware was second to none. (*p. 270.*) No complaint of crazed ware. This was three months before he left, in March, 1866 (*p. 271*); refers to Imperial China.

Henry Brunt says, was foreman under Barlow; tells how the grade of ware under new management continually advanced from third class to first class pottery. Their shapes were (*p. 296*) imitated by other potteries—both in America and England. Ware was invariably good—better than produced at most potteries, and *Young*, their present manager (*p. 296, line 40*), expressed himself in presence of Alpaugh and Magowan that he had *never seen better ware in his life*, and *he would* be satisfied if *he could* maintain the degree of excellence. That evidence was *uncontradicted.* If untrue, the witness was under their control and could have been produced. Brunt heard (*p. 307, line 34*) Alpaugh say to Kirkham, the ware was coming out "very good," and was giving satisfaction.

Then there is the written *evidence* fully confirming respondents' circulars sent out to the trade, and letters written to agents, so pertinently referred to in the Vice-Chancellor's opinion (*p. 389*). (See *Exhibit W 5, p. 366.*) Among other things says, we are the only manufacturers who have proved by actual test that our ware is the best, in quality, durability and finish. * * * Our pottery and productive facilities are the largest and best organized in the country; refers to the shapes modeled by Barlow, and writes, these designs are pronounced, not only by the trade, but by our competitors as well, to be the finest American shape and quickest selling ever produced.

See, also, *Exhibit C 14, p. 373.* Wrote to agent: The Imperial China are the only goods we propose making or selling. We are confident wherever these goods get into the hands of first-class houses they will appreciate the quality, workmanship, &c., and favor us with a continuance of their trade.

Exhibit C 12, p. 370. August 11, 1884, wrote: Push sale of Imperial China, &c.

See *Exhibit W 4, p. 364.* April, 1885, circular sent out: "We have been obliged to discontinue the manufacture of granite and C. C. ware, and confine ourselves exclusively to the production of our present leader—a high grade, named Imperial China. We claim for it a quality, durability and finish that is unrivaled, &c. (*See Circular.*)

See *Exhibit W 6, p. 367*, a circular, "Victory," in May, 1885 (less than a year before discharging managers), says (*line 18*): The Empire Pottery has the same *practical managers* and the same *experienced workmen* who have been prominently identified with the largest potteries from boyhood, and bring to us the benefit of their long and valuable experience. It is therefore self-evident that the product of the Empire Pottery is far superior in quality, durability and finish to any foreign make, and in evidence of the superiority of our goods, we invite a perusal of the annexed warranty: "Every article manufactured is fully covered by the iron-clad document as a guarantee against crazage or imperfections of any kind."

And, *in November, 1885*, a few months before discharge of managers, and when they say they gave a third notice to them of discharge (*Exhibit W 2, p. 361*), in a new agreement as to operation of pottery, they say (*p. 362, line 4*), the *good workmanship of the ware is to be maintained by a thorough system of inspection, &c.*

Surely, the remarks of the Vice-Chancellor are very appropriate (*p. 390, line 35*): "Certainly these appellants are too high-minded, honest and honorable to expect or think that any court would announce a decree which would be equivalent to convicting them of willful misrepresentation in any one of the utterances by them above quoted. Interest, duty, honor, required them to speak the truth then, and I feel it to be my duty to take them at their word."

These circulars and letters are irrefutable proofs that Wood and Barlow are good, practical potters, and they did for Alpaugh and Magowan all the law required of them under the contract.

But it was claimed as evidence of bad management that there was an undue quantity of *thirds* produced from the kilns. Magowan says so, and that it was 75 per cent. more than customary, and records will show the proportion, but the records did not appear; there were none such. His evidence stands practically alone of a manufacture he admits he had no practical knowledge of.

Wood denies it. (*p. 174.*) There were thirds, but it was on account of the close selection. *Donoher* was *very particular*—selected very closely. (*p. 223.*)

Barlow says the same (*p. 231, line 30,*) depends upon selection; states how some packages were put aside as "thirds," were re-selected and a majority was good. (*p. 232, line 12.*) Had no more positive "thirds" than other potteries.

Taft says (*p. 259, line 35,*) no more than the average elsewhere.

Maddock says (*p. 142, line 35,*) thirds depended upon selector himself.

Exhibit W 2 (*p. 362, line 21*), confirms this view.

So there is nothing in this to show mismanagement.

Then Magowan says Barlow's modeling was a failure (*p. 59*). Brunswick design was a *failure.* (*p. 357, line 30.*)

Barlow says it was designed after Moses, and made all the time he was at the pottery. (*p. 322.*) Brunt says *shapes* were superior and (*p. 296*) imitated by other potters.

Exhibit W 5 (*p. 366, line 14,*) expressly *commends this shape.*

Is it not strange that the man and ware they wanted so badly should be kept so long in employ, and made, if his work and ware were failures?

Is it not more reasonably true that what they said and *did* and *wrote* and *circulated* is so? And would it be likely to be true that appellants would place so much reliance on these managers' representations as to manufacture of new and untried products, when they say they had failed on the very ware they had been accustomed to make?

If, as Magowan says, the ware first made crazed, and was so unsatisfactory that at the end of six months they gave notice to managers to leave—and again in 18 months for same reason, (all of which is denied by respondents,) would they have written such letters and circulars, and spoken so highly of their ware and work?

It is not reasonable or natural, nor is it worthy of credence.

Is it at all likely that appellants, after they had discharged these managers in March, 1886—four months before expiration of agreement—would have continued to pay them their

stipulated weekly salary, as they did (*pp. 57 and 126*,) if they had had sufficient cause to send them away, if they had been guilty of negligent mismagement?

Is it at all credible that these appellants would have made such payments if they believed they had good claims against them for losses in management?

Does not the fact that they made these payments exclude any idea that appellants had or thought they had any ground for claim, deduction or offset against these respondents? especially when we consider that they never kept any record or account of losses, or expenditures on that account, or ever made any claim against respondents on such account until the *answer in this cause*—for their alleged mismanagement.

And then, too, Wood says (*p. 204, line 15*) Magowan told him they wanted to make a change in management, as he and Barlow did not work harmoniously together; that he would pay him his salary and guaranteed profits at the expiration of agreement. Magowan said they were perfectly satisfied with him and his mixings and wanted to continue them. Moreover, he said (*p. 205*) they had made arrangements for Barlow to manage the pottery.

Barlow says (*p. 328*) he found fault with interference with his duties by one of the men, and Magowan sent for him, and said he supposed I referred to Wood. I said, no; Wood never interfered with my duties. Then asked me if I knew Wood's mixings, and said they had decided on a change of management; that they were of opinion that Wood and me did not get along well together. I told them that two men never worked together more harmoniously. He said we differ in opinion on that. We would like to arrange with you to take the entire charge of our pottery, for a term of years, with same salary and interest in profits, and promise of increase. I declined, but offered to stay any reasonable time until they could get a man to suit. And that depended upon (*p. 330*) the satisfactory settlement of their present agreement. Magowan said, "Why, of course, we intend to keep the agreement. As business men we cannot afford to do otherwise."

Saw them again the next morning, and told them the only condition I would consent to stay on, after the expiration of our agreement, was that they should pay me all the money that was due me according to contract, with interest. Magowan said, "you ought to be satisfied with principal, let alone the interest." He was very angry, and left the office. About two weeks afterwards he told me he didn't require my services any longer.

During all this time there was no complaint made of our *management or our work.* Magowan said, "you are the man we always wanted. We have the choice of two other men, but we prefer you because you can go on and do the mixings as they have been done, and we *don't want any change.*" (*p. 331.*)

Wood says (*p. 199*), in December, 1885, Magowan wanted to make a new agreement in regard to the cost of ware. And tried the second time to get me to make such agreement. I declined, and told him then that, after the present agreement expires, I would not work any longer. After that the notice of instructions (*Exhibit W 2*) was served on us. (*p. 361.*)

Those instructions show clearly the ware and mixings of the managers was satisfactory.

The only plausible reason given for the discharge is that given by Wood and Barlow. They refused to continue the agreement. Wood absolutely, and Barlow on condition of payment of profit that was due to him.

When discharge was made, there was no new cause for it. Nothing then occurred to warrant it.

Magowan says he held them in sufferance under the notice given the previous December.

The appellants should be estopped from accepting services for so long a time, under a contract, and almost to a termination, and, after full knowledge of misconduct, as claimed for a long time. And at time of actual discharge, no new cause appearing therefor.

Dennis v. *Jones*, at last term of Court applies. (*13 C. Rep. p. 275.*)

Smith on M. & S., p. 135. (*p. 153.*)

" " *p. 183.* (*p. 208.*)

Wood on M. & S., pp. 309, 314.
38 Ind. 214, Buckalew v. *Pfeiffer.*

And payment of the weekly compensation is proof not only that they had no just cause of rescinding the contract, but that respondents' rights are the same under the contract as if they had continued in actual service until period of termination.

Respondents were as much entitled to the profits as to the weekly salary, and entitled to an account for them, and, at all events, to the $2,000 a year guaranteed profits. These rights became absolutely vested in respondents by virtue of the situation permitted by appellants, even if what they said be true.

All this is still more *strongly confirmed* by the giving of (*Exhibits C 8, C 9, C 10, C 11, pp. 369, 370,*) an *acknowledgment of the $2,000 a year profits.*

Magowan says that managers came to him at end of the first year for their $2,000 guaranteed profits; claimed it under agreement; says he told them (*p. 51*), we haven't made any profits; I took Wood to the book-keeper and said he would be entitled to a profit of $2,000, if we made profits, but I will give you a credit of $2,000 towards profits; same thing with Barlow; same thing at end of second year; that (*p. 52, line 15,*) upon their making $50,000 profits for us we guaranteed them $2,000; I told them they were not entitled to profits until made, and made the entry simply because they requested it.

Mulford, the book-keeper, says (*p. 151*) he made entries in books by order of Magowan, in June, 1884, "credit towards profits, Mr. Wood, $2,000, and Barlow, do." Did the same thing in August, 1885. Had no recollection of seeing either Wood or Barlow. When these exhibits were shown to *him* he said they were in his *handwriting;* presumes he gave them to the parties; asked (*p. 153*) how he came to do it; said, on his own responsibility.

Magowan says (*p. 16, line 10*), Alpaugh objected to the guarantee when read, at time of execution of agreement. On explanation, they waived their objection, so they knew

that the agreement was that Wood and Barlow were to have the $2,000 a year, anyhow, for profits. The *agreement* is *plain enough.*

Where does Magowan get his authority to direct Secretary Mulford to enter a credit of $2,000 towards profits? It was *duplicity*—a part of the afterthought and scheme to defeat these respondents in the recovery of their just dues.

Mulford knew it too, for he made *the entry*, and gave written evidence to the contrary.

What responsibility did he take upon himself by *their requesting* it, and each year?

Did he inform his principals? Did he deceive them?

Now, Wood and Barlow tell how those papers were given —perfectly consistent with itself and the facts. (*p. 206.*) Wood says he and Barlow, at end of first year, applied to Magowan & Alpaugh for $2,000, guaranteed to them; said they hoped we would not press them, as they were short, but would let it lay and they would give us credit for it on the books and a statement to that effect; we agreed to do it, and Magowan called the book-keeper and so instructed him, and the statements were given, and the same thing occurred at end of second year. Magowan (*p. 207, line 25,*) promised to pay us the $6,000 after we had been discharged. (*p. 208, line 15.*) Barlow tells the same (*pp. 326, 331*), and how he tried to get a settlement and has been put off.

Why give them credit for the $2,000, if they were causing losses to firm by mismanagement? Why, at the end of two years, give them such credit if they had caused and were responsible for the losses in manufacture of Vitrified China and Printed Ware, and Bone China, and other defective goods? Is it reasonable to suppose that if it were true something would not have been said, and something done indicating such a status of affairs? And would these respondents have left their money with appellants for their accommodation if what is now said of them had been true or had occurred? *Not at all likely.*

And there must have been duplicity between Magowan and Mulford in the entry in books, in one way, and giving of *statements in another.*

On the *face of that agreement* respondents at the end of a year were entitled to the $2,000 as much as to the weekly salary. No other construction can be put upon it.

But appellants contend that under the agreement they agreed with respondents as practical potters, who understood their business, and that they are responsible for all bad ware produced, and ought to be charged with it.

The Vice-Chancellor (*p. 391*) has laid down the law correctly. I refer to the cases in opinion.

Evidence does not show in any way that they ~~carefully~~ wrongfully or carelessly performed any service for appellants.

Appellants themselves were responsible for all the losses that occurred. Evidence shows that. There was nothing done in the manufacture of the ware that was unsuccessful but what was done with approval of appellants, if not their direct order. In such a case manager is not responsible for losses.

Wood on Master and Servant, 314.
8 Iowa 219, Young v. *Jones.*

It is clearly proven that appellants were consulted before the manufacture of the wares that failed, and expressly ordered what should be done, and the main loss, which was in Printed Ware, was by obeying their express order, and against the judgment of Mr, Wood. (*p. 187.*)

Magowan says, (*p. 26,*) after repeated interviews, and feeling it was not an experiment, they went into manufacture of Vitrified China Ware. (*p. 29.*) The same interview as to Bone China. (*p. 32.*) Same with Printed Ware. *They made the decision to go into the manufacture of these wares.*

Alpaugh says (*p. 103, line 14,*) they concluded to try Printed Ware. (*p. 104, line 9.*) We all concluded to go into it. (*p. 109, line 5.*) The same thing as to Vitrified China (*line 23*); he says it was an experiment. (*p. 110, line 2.*) Same as to Bone China.

Donoher says (*p. 67*), doubted their ability to make Vitrified China, and wouldn't be convinced until they had it in warehouse, but appellants decided to go ahead with it, and took orders for it. (*p. 68.*)

The Bone China was considered an experiment by appellants. (*p. 69, line 12.*)

Page 80, line 20. Managers were experimenting with Bone China and Vitrified China.

Page 85, line 14. Wood was called in for an opinion of Vitrified China. All were anxious to have it made.

This is the man that, after all these failures, went into firm in 1885, under same managers (*p. 81*).

Wood says (*p. 178*), firm ordered him to make Vitrified China. (*p. 179*), insisted upon against his judgment. (*p. 181, line 10*), kiln ordered built by firm for Printed Ware. (*p. 182*), body of ware changed at firm's request. Wood expressing his judgment against it. Ordered the manufacture, releasing him from all responsibility (*p. 185, line 22*). (*p. 187*), as to *Bone China*, told firm he had no experience in that line. Magowan ordered a batch made up (*p. 193*). It was successful.

Barlow says (*p. 313, line 1,*) they didn't want to make Vitrified China. Magowan ordered it, and firm discontinued it.

Heard Wood tell Alpaugh and Magowan (*p. 317, line 20,*) it was a mistake not to allow him to use his own judgment in making a body for the Printed Ware. They both protested, as it would sacrifice the color. And subsequently (*pp. 318–319*), at interview, ordered him on with work. Released him from all *responsibility*. He ought to send the ware through faster.

Page 320, line 15. Started Bone China at Alpaugh's request. He ordered it stopped (*p. 321*). Was an experiment (*p. 349*).

Nor is it true that they made any guarantees as claimed. They expressly deny it over and over again (*pp. 192, 237, 315, 322, 346, and other times*).

The acts of appellants are conclusive proof that they did not rely on any such guarantees. Such as retaining them in their service. Paying them their full weekly wages. Giving them statement of their guaranteed profits. Keeping no account of losses. Making no claim. Praising their

workmanship by circular and letter, and boasting of the quality and finish of their ware.

But they say there were *no profits;* that losses were so heavy as to prevent profits, and book-keeper produces a journal to show periodical statements (*p. 129*), made at end of 7 months and 13 months. In latter, shows a loss of $15,000

Now that statement was made by themselves. Managers are entitled to an independent investigation. There is nothing in evidence to show losses in business prior to second statement. They only manufactured their regular ware up to that time. They had just commenced experimenting with the Vitrified China. *Exhibits C 14, C 13, pp. 373, 374,* show this. The losses in *printed ware were subsequent.*

It seems strange that after all this, as Tatler says (*pp. 254, 255*), Alpaugh said they were satisfied with Wood, and Magowan praised Barlow as the right man in the right place. (*p. 248.*)

They couldn't have been satisfied if they were losing so much money.

Magowan said also, as Barlow testifies (*p. 349, line 35*), that there was a showing of $30,000, in 1885, gross profits. (*p. 325, line 35.*)

Wood says, in 1885 (*p. 203, line 28,*) Magowan spoke to him about buying out his interest, and said he believed they were making money.

So they included matters not proper—as salaries of $3,000 a *year* to each Magowan and Alpaugh; and interest; *$3,000* to each *in capital*—a total of $12,000 a year. (*pp. 140, 146.*)

They were not entitled to either, except from the share of the profits. No pretended agreement that owners should draw salaries.

Then it appears that the values were fixed by the clerks, Wood and Barlow not being present. (*p. 147.*) Wood says he didn't know how they were made up. He went around with the clerk and counted the ware. Barlow says the same—that is all they had to do with the accounts.

Then the goods returned. As to the amount, it is not reliable. (*p. 13.*) Mulford puts it above $10,000.

It included everything returned, even old Coxon ware. Wood so says. (*p. 176.*) And every pottery has goods returned that it has to replace; that is the meaning of *guaranty*. Much of which was sold at some price, and probably charged in return-book at selling price to customers, which included a large profit over cost.

But all the losses and defective or crazed ware was a mite in comparison with the gross product of manufacture, which was, Wood says (*p. 190*), $700,000 to $800,000 during their management. Alpaugh did not actually know, but said in 1885 about $200,000 worth (*p. 117*); couldn't tell how much decorated ware was made, nor how many goods were returned or reshipped.

Can it be there was not profit in that great production—that they would continue a manufacture for three years that was a losing concern all the time, and give out to the trade all the time that they had successful management, and everything prosperous?

Their losses in printed ware came entirely from their mode of doing business. On sample produced they went right off, took orders, &c., without any assurance that they could produce the stock.

Are respondents responsible for firm selling what they hadn't made—what was *purely experimental?*

Their circulars and letters to agents show that they only had produced samples of vitrified ware, bone china and printed ware, and announce they are ready to take orders; and when orders came in they hadn't the goods, and they were ordered to be hurried through, and some came out soft-fired, had to be re-fired, and, forsooth, now throw the entire blame on these innocent managers.

It is said, Gruesser (*p. 89,*) that by winter of 1886, January, there was on hand and sold for thirds about $15,000, mostly underglaze ware. Had no memorandum of it; destroyed.

Mulford says (*p. 136*) there *were some $8,000* worth of goods returned; some were re-fired and some sold. Memorandum destroyed (*p 136*).

Wood says (*p. 191, line 35*) they were dregs and accumulations, and included only the inferior. Had some *good toilet sets* too.

Some printed ware was stock left on hand from looseness in taking orders—six to nine months ahead—and orders countermanded.

The thought suggests itself why they didn't keep these memoranda as records. They certainly would if they had then any thought of making a claim for losses against these respondents, and not doing so leads to the other conclusion that they had no such just claim.

Now, all assertions of undue cost of manufacture by these managers—excessive pay-rolls for the results, and comparison of outfits, &c.—are all fully explained by Wood and Barlow in their evidence. They told a full, consistent, honest account of their work as managers. They acted fairly and honestly in every respect. They devoted time and skill for the interest of their employers, and were complimented and flattered for their success. They were interested in making it a success. The interference of the appellants, with the general work in which they were engaged at the start, making Imperial China, and rushing into uncertain grades of manufacture, doubtless cost money and cut off some of their profits, that they would otherwise have made. They made profits the first year. As practical potters, and that was all they claimed to be, they could not be expected to be experts in science, and make everything perfect that is made in any pottery. Their agreement did not call for any more skill or knowledge than they had. There must be some degree of skill implied, but not for everything that may be fancied by their principals.

And when, in case of failure or loss in production of ware, appellants attribute the loss to unskillfulness, they negative their opinion by continuing the same management for a long time, and through alleged repeated failures, they waive the objection—estopped from asserting it, and are responsible on the contract to respondents for all that is due to them by its terms, which is ten per cent. of the profits And to have an expert examination to see what profits there were. And if they do not give to them each $2,000 a year, then they must be bound to pay that sum, according to their guarantee.

The appellants' position is against anything being due to respondents; that the lossess by mismanagement exceeded or equaled what they would have been entitled to. This is the claim set up in answer. The court decided properly (*p. 384, line 20*), after the fullest investigation (and that after hearing the witnesses orally before him), he could lay hold of nothing that justified him in holding any right accrued to appellant that hinged upon the contract. If there were such rights, he follows the decision of the court in *Trotter* v. *Heckscher*, *13 Stew. 659*, that it could not be set off, as it did *not accrue under* the *contract.*

The answer sets up misrepresentations upon which the contest was founded; claims all losses arise from those misrepresentations.

That contention being settled in favor of respondents, there remains nothing, as Vice-Chancellor decrees, to consider but what goes to show a total failure of consideration by negligence of managers. On that point we have shown its untruthfulness, and especially that the great bulk of manufactured goods were good and were sold, and appellants are bound to submit that production of the business to an examination and account.

Waterman on Set-Off, § *458*, *465*, *470*, *547*.
Sedgwick on Dam., *431*, *&c.*
Abbott v. *Golck*, *13 Md. 314*.

The Vice-Chancellor's opinion is full and exhaustive. We carefully heard the witnesses and examined the case and we submit the decree is correct.

JAMES S. AITKIN,
Of Counsel with Respondents.

NAAR, DAY & NAAR, Printers and Stationers, Trenton, N. J.

NEW JERSEY

Court of Errors and Appeals.

SPENCER M. ALPAUGH ET AL.,
APPELLANTS,
and
WILLIAM WOOD ET AL.,
RESPONDENTS.

BRIEF FOR APPELLANTS.

Statement.

The following is an abstract of the facts set forth with particularity in the brief of my associate and appearing in the testimony in the cause:

Prior to the month of May, 1883, the appellants, Alpaugh & Magowan, were co-proprietors, with gentlemen by the name of Coxon, of a large pottery in Trenton. The Coxons were practical potters, and had

charge of the manufacture of the ware, and the appellants managed the sales and financial parts of the business. The entire plant was of the value of about $200,000, one-half of which was owned by the appellants, and the other half by the Coxons; the net profits of the pottery were less than six per cent. upon the investment.

The appellants were dissatisfied with the management by the Coxons of the manufacturing department, and were anxious to produce a higher and better quality of ware than the "C. C. and Granite Ware," which the pottery had theretofore produced, that being the lowest grade in quality of manufactured ware. In order to accomplish their purpose and to manufacture the higher grades of ware, they purchased the interest of the Coxons, and during the course of their negotiations for that purchase, entered into negotiations with Wood and Barlow, the respondents, preparatory to employing them, to manage the mechanical department of the works, and to have the entire charge of the manufacture of a higher grade of pottery. These negotiations were continued through a period of a fortnight or more, and resulted in the execution of the agreement set forth in page 360 of the printed book.

By this agreement Wood and Barlow undertook "to superintend and manage the manufacturing part of the business of said pottery, including the decorating

department, *taking entire charge of the works, employment of hands, and selection of materials.*"

The appellants insist and testify that during the course of the negotiations preceding the agreement, that Wood and Barlow represented to them that they were not only competent and skilled in the conduct and management of so large a pottery, and in the product of the higher grades of ware, that a very large profit would be realized from their management, but that they thoroughly understood the manufacture of "*Imperial China*," "*Vitrified China*" and "*Underglazed Goods*," and could manufacture the same in large quantities, for the supply of the general market of the trade, and they exhibited samples to the appellants of very beautiful ware, of the sorts above stated, which they declared they had themselves manufactured and were able to manufacture in large quantities, and they represented that the profits of the entire business would be very large.

The respondents utterly deny the testimony of the appellants, and positively swear that during the entire course of the negotiations preceding the contract that not one word was said, either by the appellants or by themselves, either as to the quality of ware that was to be manufactured or as to their skill or ability to manufacture *any* kind of ware; they swear positively that nothing was said about "Imperial China," "Vitrified China," "Underglazed Goods" or "Bone China," and

that they never exhibited any samples of any kind of ware as proofs of their skill as manufacturers or otherwise. Wood testifies that he remonstrated with the appellant, Magowan, upon his want of caution in employing them in so important an undertaking, when he knew nothing about them, and that Magowan answered that he had heard enough about them to satisfy him. The testimony shows that Magowan had made but one inquiry respecting the skill of the respondents, to wit, of one *Robert Sterling*, a common workman in a pottery in which Barlow was then employed.

The respondents undertook the management of this large pottery in May, 1883, and for many months manufactured no other kind of ware than the "C. C." and "Granite Ware," which had theretofore been accustomed to be manufactured in the pottery, thus utilizing the materials and partly manufactured ware on hand in the pottery. Their preparations for the manufacture of a higher grade of ware went on with great deliberation throughout the period of these many months, until in 1884 the "Imperial China" was actually manufactured by the respondents and put upon the market, and the result is detailed in the *Printed Case, pages 21–25, 69, 101–108, 177.*

At a subsequent date they undertook to manufacture "Vitrified China," and the result is detailed in the *Printed Case, pages 25–29, 108, 109, 177–192.*

Subsequently the respondents undertook the manufacture of "Bone China," and the result is detailed in the *Printed Case, pages 29, 30, 68, 69, 109, 110, 193.*

The respondents also undertook to manufacture "Underglazed Goods," and the result is detailed in the *Printed Case, pages 71–77, 88, 89.*

The general result of the management of the manufacture of ware by the respondents, during the period of their actual employment as managers of the pottery, is proved by the books of account of the pottery proved in the cause, and *Printed Case, pages 128–130.* The net loss of the business of the pottery during the aforesaid period was $42.173.95, and the respondents were then discharged by the appellants from their employment.

Brief.

1. The Suit.

The bill of complaint in the cause is filed, and the jurisdiction of a court of equity is invoked upon the pretense that it is a bill for an *account.* An examination of the bill, however, will show that it is in reality a bill for the *specific performance* of the contract set forth in the bill, and that the *account* prayed for is purely subsidiary to the main object of the bill, which

is to compel the payment of the compensation which the agreement provides to be paid by the appellants to the respondents. It is not pretended in the bill that the respondents sought the account prayed for in aid of a suit at law, but purely for the purpose of enforcing the specific performance of the agreement, and compelling payment of the balance of the compensation alleged to be due thereon.

A court of equity always exercises its discretion as to granting relief by the taking of an account, and unless an account is the main object of the bill, and not merely subsidiary to that object, it will not entertain jurisdiction.

Seymour v. Long Dock Co., 5 C. E. Green, 396, 407;

Jewett v. Bowman, 2 Stewart, 174, 177.

And it will be observed by the court that it is proved in the cause that there were no profits earned in the business during the employment of the respondents, but that, on the contrary, there was a net loss sustained during such employment amounting to $42,-173.95. This evidence was not pretended to be contradicted in any way by the respondents. It is apparent that the whole object of the bill was to enforce the payment to Wood and Barlow of the sum of $2,000 per annum profits guaranteed to each of the respondents by the agreement. It is obvious, from the

perusal of the opinion, that the vice chancellor so considered and adjudged.

Fraud.

It is obvious that the defense in this case is that Wood and Barlow practiced a gross fraud upon the appellants, both *by implication of law* and by actual *fraudulent representations* as to their skill and ability to manage a large pottery and to manufacture a high grade of ware.

If the respondents have been guilty of either of these species of fraud, a court of equity will refuse to aid them in securing the fruits of such fraud. If they have obtained a *legal* advantage over the appellants by their superior astuteness, and have maintained it by successfully practicing upon the confidence of the appellants, they will be left to a court of law to secure the fruits of such advantage.

It is well settled in equity that where the remedy sought to be pursued is wholly within the discretion of the court, that a court of equity will not afford the relief sought for, if the case be open to suspicion on account of fraud, or if the subject matter be a hard contract whose enforcement would be attended with great hardship.

King v. Morford, Saxton, 274, 281;

Stoutenburg v. Tompkins, 1 Stockton, 332, 335;
Plummer v. Keppler, 11 C. E. Green, 481, 482.

It is respectfully submitted that the testimony in the cause clearly shows that the complainants below have so conducted themselves, both in the *consilium* antecedent to the execution of the agreement, and in the performance of that agreement on their part, as to be unworthy of the aid of a court of equity.

Fraud by Implication.

1. Alpaugh & Magowan, at and during the negotiations with Wood and Barlow were dissatisfied with the quality of the ware produced at this pottery, then owned by themselves and the Coxons, under the management of the Coxons, who were the practical potters of the concern. The management of the Coxons was poor, and the results of the business under their management was, that the large capital invested ($200,000) did not earn as much as six per cent. per annum. These facts were well known to Wood and Barlow, and they also knew that Alpaugh & Magowan, for the purpose of securing a better management of the pottery, were about to purchase the interest of the Coxons, and to employ *thoroughly competent men* to conduct the management of the pottery and the manufacture of high grades of ware. They knew that the capital in-

vested was very large, that the pottery was of very great capacity, and that to properly manage the manufacturing department of so large a concern would require a high degree of skill both in the potting art and in securing proper and efficient work in the part of a very large number of workmen. They knew that the material, clay, &c., would have to be selected with great skill and purchased at proper prices. They knew that the workmen must be selected with great care to secure skillful mixing, shaping, glazing, ornamenting and firing of the ware. They knew that Alpaugh & Magowan had no practical knowledge of any of these matters, and that they desired to employ persons who had the necessary practical and business skill to manage in a workman like and business like manner the entire practical department of the pottery.

The law implys that Wood and Barlow warranted to Alpaugh & Magowan that they possessed all these qualifications, and that they were fully competent "*to superintend and manage the manufacturing part of the business of said pottery, including the decorating department, taking entire charge of the works, employment of hands and selection of materials.*"

That this is the legal implication is settled law.

Common Law Rule.

Under the circumstances stated above, the *common*

law imposes upon the respondents the obligation of possessing a high degree of skill in the employment which they undertook, and the obligation to faithfully exercise that skill for the benefit of the appellants. It is evident, that in an undertaking of so great magnitude, the law exacts from the respondents the possession of a corresponding degree of skill in its management. None but men of *high* skill could undertake such employment. None but men of the *highest* skill could, in common fairness, demand or receive so extraordinary a compensation.

The authorities fully sustain these points.

"There is in all contracts for service a promise, *implied*, if not expressed, that the party employing will pay for the service rendered, and, on the other hand, that the party employed will use due care and diligence, and *have and exercise the skill and knowledge requisite for the employment undertaken.* It is on this ground that physicians and surgeons are liable for any injury caused by their want of due skill or of due care."

2 Parsons on Contracts, 5th Ed., page 54.

"Every person who professes to be a *skilled workman* impliedly *undertakes* to do his work *well and in a workmanlike manner*, and according so the rules or principles of his trade or art. * * * * * * The public profession of an art is a *representation and*

undertaking to all who require and make use of the services of the professed artizan, that the latter is *possessed of* and *will exercise* the ordinary amount of skill and knowledge incident to his particular craft, art or profession. * * * * The degree of skill and diligence which is required from the workman *rises* in proportion to the value, the delicacy and the beauty of the work, and the fragility and brittleness of the materials."

2 Addison on Contracts, 3d Am. Ed., Sec. 874.

"Whenever the work contracted to be done is a work of art and skill, and the undertaker being charged with the bare work, executes it so negligently and unskillfully as to render it utterly useless to the employer, he cannot call upon the latter for payment of it."

2 Addison on Contracts, Sec. 875.

Says Justice Bayley, in *Duncan v. Blundell, 3 Starkey, page 3:*

"Where a person is employed in a work of skill, the employer buys both his labor and his judgment; he ought not to undertake the work if he cannot succeed, and he should know whether it will or not; of course it is otherwise if the party employing him choose to supersede the workman's judgment by using his own."

Says Justice Le Blanc, in *Basten v. Butter, 7 East, pages 479, 484:*

"I think that in either case the plaintiff must be prepared to show that his work was *properly done,* if that be disputed, in order to prove that he is entitled to his reward; otherwise he has not performed that which he undertook to do, and the consideration fails."

Says Chief Justice Booth, in *Hall v. Cannon, 4 Harrington, Del., page 362:*

"But if it appears that the plaintiff has been guilty of mismanagement or misconduct in his work, so that by reason of such mismanagement or misconduct, no benefit whatever has been derived by the defendant, the plaintiff is not entitled to recover. And the reason is, that wherever a person undertakes, and is employed to perform a work requiring skill and labor, and fails to perform it in a good, skillful and workmanlike manner, so that the employer derives no benefit whatever, the person employed is not entitled to recover any part of his demand.

"Where a man holds himself out to the world as a person of skill or competency in any particular trade or calling, and is employed to perform work in that trade or calling, *the law implies a contract on his part* to do the work in a skillful and workmanlike manner. In such case the employer purchases the *skill, labor and judgment* of the workman or mechanic, and no man

ought to undertake such work *if he does not know that he is competent* to perform it in a proper, skillful and workmanlike manner."

Says the court in *Goslin v. Hodson, 24 Vt., 142 :*

"It seems from the facts reported by the auditor that the plaintiff recommended himself as a competent workman and undertook to work as a master builder, and through his negligence or unskillfulness the defendant suffered loss to a greater amount than the sum due for his services at the stipulated rate. We think this will defeat the action."

Wood on Master and Servant, sec. 155 ;
*Smith on Master and Servant, *page 151, &c. ;*
Appendix to 3 Addison on Contracts, 8th Ed. ;
(Wood & Abbott's Notes), page 18.

2. Another implication of law arises on the face of this contract, from *the very high compensation* demanded by Wood and Barlow and agreed to be paid by appellants. The *ordinary* compensation paid to *ordinary* managers of the practical departments of the making of pottery is proved to be $2,000 per annum. (*Printed Case, page 156, line 5 to line 10, page 157.*) But the compensation demanded by and agreed to be paid to Wood and Barlow was to be *at least $5,000 per annum* to each, and the law therefore implies from this *extraordinary* compensation that they represented and

warranted themselves to possess an *extraordinary degree of skill* in the pottery art and in the management of a pottery.

3. The result of their employment and their lack of *ordinary competency* is shown by the testimony. There is no pretence that Alpaugh & Magowan *managed badly* the financial department, or that losses were incurred by reckless sales or bad debts; but the *books* show that the losses of the business, during the term of employment of Wood and Barlow, were $42,173.95; and the *testimony* shows that these losses were caused by bad ware and bad management.

Of this great loss, some $20,000 were caused by the incompetency of Wood and Barlow to manufacture "*Vitrified China*," "*Bone China*" and "*Underglazed Ware;*" admitting, for the sake of argument, that the attempted manufacture of these wares were mere "*experiments*" and not within the scope of the agreement, yet there remains a loss of over $20,000, caused by the incompetency of Wood and Barlow and their want of skill to manufacture "*Imperial China*" of good quality. This ware was clearly within the scope of the agreement, and so *Barlow* testifies. (*Printed Case, page 336, line 23 to line 13, page 337.*)

So that it appears that the services of Wood and Barlow were not only *of no value* to Alpaugh & Magowan, but caused *a loss of $20,000.*

4. Whilst the appellants do not ask of the court any *affirmative* relief in respect to these damages, they do seek to set them up as defence to the bill, *by way of recoupment pro tanto* to the claim for the agreed compensation. The court below clearly erred (*Printed Case, page 384, line 28 to 32*), in holding that this defence could not be admitted, because the agreement in this case was a *sealed* agreement. This is the more remarkable, because the case cited to sustain the decision states that such a defence is now admissible by virtue of rule 83 of the Supreme Court.

Corbin's Rules, page 81 ;
Trotter v. Hecksher, 13 Stew., 612, 657.

Actual Fraud.

If the testimony in the cause satisfies the court that the respondents, Wood and Barlow, represented to Alpaugh & Magowan that they were not only skillful and competent to manage this pottery and to manufacture *Imperial China* of a high grade, but that they could produce *Vitrified China*, *Bone China* and *Underglazed Ware* of a high grade and in quantities to supply the market, and subsequently not only proved themselves utterly incompetent to produce such wares, but in their effort to do so caused a loss to Alpaugh & Magowan of more than $20,000, then Wood and Barlow have been

guilty of a fraud so gross that this court would give them no aid in the premises.

The court below practically determined that Alpaugh & Magowan agreed to pay Wood and Barlow wages more than twice as high as other workmen rendering like service received in Trenton, and to indemnify Barlow for his breach of contract with James Moses, without any representation at all being made by either Wood or Barlow that they possessed any particular skill or any ability to manufacture the specialties last above mentioned. The Vice Chancellor lays down the law to be that Alpaugh & Magowan had the opportunity to ascertain by inquiry as to the skill of Wood and Barlow, and that in hiring them they assumed the responsibility of determining such skill; that Wood and Barlow never pretended to have anything more than ordinary skill, and indeed made no representations whatever on the subject. In other words, the Vice Chancellor rejects all the testimony of Magowan, Alpaugh and Donaher, and accepts implicitly all the testimony of Wood and Barlow.

1. It is an irresistable conclusion that there must have been *something extraordinary represented* to Alpaugh & Magowan respecting the skill of the respondents, to have induced them to agree to pay the respondents each $5,000 per annum, when the highest

rate paid to the very numerous other superintendents in Trenton, rendering the same services, was $2,000 per annum.

Alpaugh & Magowan must be credited with possessing ordinary intelligence, and no man of ordinary intelligence would agree to pay twice and one-half the usual rate of wages without having received *the strongest possible representations* as to the capacity and skill of the employee. The only *inquiry* which the testimony discloses to have been made by Alpaugh & Magowan, of others than the respondents, was that made by Magowan of one Robert Sterling. Sterling was called as a witness by Wood and Barlow, and the extent of his commendation will be found on page 285 of the case. Sterling says that he told Magowan, in answer to his inquiry, that Barlow did all the mixing for the Mercer Pottery, and that he (Magowan) couldn't get a better manager.

It is certainly ridiculous to pretend that *such* a representation induced Alpaugh & Magowan to agree to pay Wood and Barlow twice and a half the usual rate of wages, and to indemnify Barlow for his breach of his contract with James Moses.

On the other hand, if Wood and Barlow did represent to Alpaugh & Magowan that they possessed such a high degree of skill and such a thorough knowledge of pottery that they could successfully manufacture Vitrified China, Underglazed Ware and Bone China in

such quantities as to supply the market, and if they produced samples of a high quality which they declared they had made, and could produce at any time large quantities of equal quality, and that by the production of these high qualities of ware, profits to the amount of forty or fifty thousand dollars a year could be earned by the pottery, as Magowan & Alpaugh testify they did represent, then we have the clearest possible explanation of the readiness with which Alpaugh & Magowan agreed to pay them $5,000 per annum each, and to indemnify Barlow for his breach of contract with James Moses. The only reasonable explanation of the remarkable bargain made by Alpaugh & Magowan, is, that they have testified truly as to the representations made to them by Wood and Barlow.

Besides it seems to me utterly incredible that during the negotiations between these parties preceding the agreement and which continued almost daily for two weeks, that Alpaugh & Magowan never inquired of Wood and Barlow as to their skill and experience in the management of a pottery, or as to their ability to manufacture a high grade of ware. They were about to invest an additional $100,000, and become sole proprietors of this property, with the sole intent of producing a higher grade of ware. The success of the whole enterprise in which they would have embarked $200,000, depended almost entirely upon the skill and

ability of Wood and Barlow; and yet Wood and Barlow testify that Alpaugh & Magowan never said anything to either of them about the grade of ware that was to be manufactured or inquired of them as to their skill and ability to manufacture any grade of ware whatever, and that during the whole preliminary negotiation *not one word was said by any of the parties to the agreement in respect to the kind of ware to be made or their ability to make it.*

It would not have been so incredible a story if Wood and Barlow had testified that they had represented that they could make good ware of a high grade, but did not represent that they could successfully make Vitrified China, Underglazed Ware and Bone China; but it was certainly most fatuous for these men to testify that *nothing whatever* was said by any of the parties upon the subject.

Weighing the testimony of Alpaugh & Magowan in the balance with the testimony of Wood and Barlow, is there any doubt, in view of the remarkable agreement and the surrounding circumstances, that the testimony of the former is the most entitled to credit? and it is to be remembered that Donaher, who was a perfectly disinterested witness, testifies most explicitly that Wood and Barlow, before beginning the manufacture of Vitrified China and Underglazed Ware in 1884, reiterated to him, in the presence of Alpaugh and Magowan, their skill and ability to manufacture these

wares successfully for the market, and made samples of them in the pottery, which were to be and were delivered to the traveling salesmen for the purpose of procuring extensive orders from the trade for their manufacture, and which induced Alpaugh & Magowan to deliver with the exhibition of such samples, not only the printed circulars (*Case, page 364-368*), but the literally iron-clad warranty (*Case, page 368*) which evince in the strongest possible manner their *absolute confidence* in the representations made by Wood and Barlow of their skill and ability to manufacture these goods.

What stronger evidence could be furnished of the fact that Wood and Barlow represented that they possessed and would exercise the highest degree of skill in the art of pottery, and that Alpaugh & Magowan *implicity believed them*, and were *induced thereby* to secure their services even at the enormous compensation expressed in the agreement in the cause.

It is submitted that there can be no doubt that Wood and Barlow did make substantially the representations testified to by Alpaugh, Magowan and Donaher, and that these representations induced Alpaugh & Magowan to make the agreement in question.

2. It will be borne in mind that the respondents have come into a court of equity to enforce the performance of this agreement, and have obtained their

footing here solely on the ground that such enforcement involves the taking an account of the profits of Alpaugh & Magowan's business during the term specified in the agreement. It is extremely doubtful whether they should be permitted to remain in the court, inasmuch as it clearly appears from the testimony in the cause, that there were no profits made of which an account can be ordered, and that, on the contrary, very heavy losses have been sustained during the term of the respondents' employment, and as they well knew the facts thus disclosed, it is clear that they should have brought their action at law. But having come into a court of equity, they must satisfy the conscience of the court that their hands are clean, that they have acted in good conscience, that they have made no false representations, and that they are equitably entitled, in addition to the salaries of $8,500 each, which have already been paid to them, in equity and good conscience to receive the further sum of $6,800 each.

The *onus* is clearly upon the respondents to make out their equity, and that they have, in fact, fully and faithfully performed all their obligations under the agreement, and that the agreement was procured in absolute good faith and without actual fraud or fraud in equity.

It is hardly necessary to cite the authorities defining the rules which govern a court of equity in such a case as this, but it may be convenient to cite the following authorities.

"It is said, indeed, to be a very old head of equity, that if a representation is made to another person going to deal in a matter of interest, upon the faith of that representation the former shall make that representation good if he knows it to be false. * * * * Where the party intentionally or by design misrepresents a material fact, or produces a false impression in order to mislead another, or to entrap or cheat him, or to obtain an undue advantage over him; in every such case there is a positive fraud in the truest sense of the term. * * * * Whether the party thus misrepresenting a material fact knew it to be false, or made the assertion without knowing it to be true or false, is wholly immaterial; for the affirmation of what one does not know or believe to be true is equally, in morals and law, as unjustifiable as the affirmation of what is known to be positively false. And even if a party innocently misrepresents a material fact by mistake, it is equally conclusive, for it operates as a surprise and imposition upon the other party."

1 Story Eq. Jur., secs. 191, 192, 193.

"If a man represents as true, that which he knows

to be false, and makes the representation in such a way, or under such circumstances, as to induce a reasonable man to believe it is true, *and is meant to be acted on*, and the person to whom the representation has been made, believing it to be true, acts upon the faith of it, and by so acting sustains damage, there is fraud to support an action of deceit at law, and to be a ground for the rescission of the transaction in equity."

Kerr on Frauds, Bumps' Ed., page 53.

"A misrepresentation must be an affirmative statement or affirmation of some fact, in contradistinction to a concealment or failure to disclose, and to a mere expression of opinion. In the great majority of instances it is made by means of language written or spoken; but it may consist of conduct alone, of external acts, when through this instrumentality it is intended to convey the impression, or to produce the conviction that some fact exists, and such result is a natural consequence of the acts. * * * * In order that a statement may be a fraudulent misrepresentation, the party making it need not have any malignant feeling against the other, nor any desire to injure, nor need he be actuated by any corrupt or wicked motive; for equity looks at the relation of the statement towards the real facts, and the results that will naturally flow from it rather than at the mental condition, temper and feel-

ings of the persons who makes it. If, therefore, a representation made prior to the transaction and directly relating to it, is of such a character that it would naturally and reasonably induce, *or tend to induce*, any ordinary person to act upon it and enter into the contract or engage in the transaction, and is, in fact, followed by such action on the part of the other person, then it will be presumed that it was made for the purpose and with the design of inducing that person to do what he has done, that is, to enter into the agreement or engage in the transaction; the design will be inferred from the natural and necessary consequences. It is not necessary that *all* the representations by which a party is induced to act should be untrue. The cases hold that where certain statements have been made all in their nature capable, *more or less*, of leading the party to whom they are addressed to adopt a particular line of conduct, *and any one of them is untrue*, the whole contract or other transaction is considered as having been obtained fraudulently; the court cannot discriminate among the different statements nor say that the untrue representation is not the very one that induced the party to act. The foregoing general proposition, that it is sufficient if the statement is of such a character as would naturally induce any ordinary person to enter upon a particular line of conduct, and is actually followed by such conduct, is the *practical rule* by which the courts determine whether a misrepresention pos-

sesses the particular element of fraud, the purpose or design, now under consideration. * * * In setting up a material misrepresentation to defeat the specific performance of a contract, the element of a *scienter*, of knowledge, of belief with or without reasonable grounds, or of intent, is wholly unnecessary and immaterial. So far as this most essential element of a fraudulent misrepresentation is concerned, it is sufficient to defeat a specific performance that the statement *is actually* untrue so as to mislead the party to whom it is addressed; the party making it need not know of its falsity nor have any intent to deceive, nor does his belief in its truth make any difference."

2 Pomeroy Eq. Jur., secs. 877, 880, 889.

These citations are supported by an overwhelming mass of authorities cited in the notes to the several text books, and as it is impossible to comment on them, I respectfully refer the court to them.

The testimony shows that not only did the respondents, by implication of law, represent themselves to possess a very high degree of skill in the manufacture of Imperial China, and that they were so unskillful in such manufacture as that their management caused a loss of more than $20,000 therein, during their employment; and that they also represented they possessed a high degree of skill and ability in the manu-

facture of Vitrified China, Underglazed Ware and Bone China, in which they were so utterly unskilled that they entirely failed in such manufacture, and caused a further loss thereby to Alpaugh & Magowan of more than $20,000; but it also absolutely *demonstrates* that they are impudent fraud-doers, seeking the aid of a court of equity to reap the fruits of the fraud they have practiced.

It is submitted, therefore, that this court will reverse the decree below and leave these fraud-doers to such redress as they may be able to obtain in a court of law.

And it is further submitted, that if this court should retain the cause, it would reverse the decree of the court below, and direct that all damages sustained by Alpaugh & Magowan, by reason of the want of skill of Wood and Barlow, should be set-off against the compensation stipulated by the agreement to be paid to Wood and Barlow.

The decree should be reversed, and the bill of complaint dismissed.

Barker Gummere.

MacCrellish & Quigley, Printers, 16 East State Street, Trenton.

Court of Errors and Appeals.

Between

SPENCER M. ALPAUGH ET AL.,
Appellants,

and

WILLIAM WOOD ET AL.,
Appellees.

On Appeal.

The bill in this case, filed for an account of profits claimed by the appellees, the complainants below, under an agreement made between them and the appellants, dated May 7th, 1883, prays for an accounting and also for the payment to each appellee of the sum of $2,000 per year, claimed by them as guaranteed profits under said agreement.

The answer filed, while admitting the execution of the agreement, denies the right of the appellees to all account and also any claim on their part to the sum claimed as guaranteed profits; charges gross incompetency on the part of the appellees and fraud and misrepresentation, resulting in great loss and damage to the defendants.

The decree entered in pursuance of the opinion filed by Vice-Chancellor Bird, ordered an accounting of the dealings, transactions and business of the pottery carried on by the appellants, to the end that the appellants may be ordered to pay to the appellees ten per cent. of the net profits of the said pottery, and that if the Master should report that if the net profits should not amount to such a sum, that the per cent. thereof would realize to the said appellees the sum

of two thousand dollars a year to each, that the Master should report how much is due to the appellees respectively for their profits as guaranteed to them, at the rate of two thousand dollars per year to each of them. (*p. 393.*)

The appellants, at the time of the making of the agreement, were the owners of a pottery in Trenton, known as the Coxon & Co. Pottery. They had just purchased the undivided one-half interest of the Coxons in said pottery; the management had previously devolved entirely upon the Coxons, and they were then without any practical managers. (*p. 10.*)

Neither of the appellants was a practical potter. Mr. Alpaugh had been in the business for some years, yet it was as a financial manager and salesman; as he testifies (*p. 99*), he had no practical knowledge of mixing or glazing or anything of that kind. "I never had anything to do with the management of a pottery at all."

They had paid $87,500 for the Coxon interest, and in all had over $200,000 invested in this pottery. (*p. 99.*)

I. Negotiations leading up to the Agreement.

With this large interest involved, the pertinent inquiry is, of what were these appellants in need? Was it of men, as managers, who were competent, practical potters, or of men who were incompetent; of men who had a scientific and practical knowledge of this important trade, or of mere pretenders and experimental bunglers?

Is it to be supposed that these appellants, men of experience in business and of more than ordinary intelligence, were seeking as managers men who would cautiously hide their light under a bushel; men who would not talk as to their competency for the work to be undertaken, or did they seek men who, by clear and unqualified statements, would represent what they would do and what they could do if placed in this important place of trust?

This matter of employment was of vast importance to these appellants, and no one who carefully considered the

testimony in this case can believe that they made any engagement for service without a full and accurate investigation by personal inquiry from the parties to be employed and after assurances of their competency and ability to perform the work.

It requires a vast stretch of imagination to believe that these appellees were employed, as they insist, without any reference whatever as to the grade of ware they could produce or the manufacture of ware at all. (*p. 213.*)

No such hiring took place; no such hirings ever take place. The testimony upon this point in the case covers a large space, and in the time allotted to me, I cannot pretend to go over it all, and the Court will not expect it.

Upon Mr. Magowan fell the responsibility of making the necessary inquiries and negotiations.

He first met James Barlow.

"I made known to him that we were obliged to get the best practical men we could to manufacture our ware and manage our pottery. * * * * I talked to him relative to securing his services and manufacturing our ware. * * I asked him many questions about his success as a practical man, to all of which he replied favorably." (*p. 10.*)

By arrangement, he again met Barlow. (*p. 12.*)

"Talked over the matter, and it was simply a repetition of former guarantees of success and of large profits, and he reiterated Mr. Wood's statement that he would not take hold of the management unless accompanied by Mr. Wood, and that a satisfactory arrangement had to be made with Mr. Wood to secure his (B.'s) services. I talked salary to him and found $3,000 was what he desired. * * * He stated that he had manufactured and managed in its entirety the Mercer Pottery, and knowing that James Moses or the Mercer Pottery had been the most successful in Trenton, and had made the most profit, I asked him many questions in connection with his management there. He said he was the originator and the modeler of their shapes. He also stated that any reputation that pottery had secured for their

ware was the result of his mixings. He also pointed out the fact that they had a good name for good workmanship and manufacture of ware. I asked him if he could carry out the same policy and would guarantee to do it in our place, and he said he would, and, with Mr. Wood connected with him, a bigger success would be insured, and the fact that we had larger works than the Mercer Pottery would secure larger profits. He called attention to the specialties that they had and which Mr. Wood would talk about."

Is there any air of improbability about this clearly narrated statement? Is it not just such a conversation as would take place prior to a contract of hiring? You have the statement of personal ability to do the work, you have the statement of the practical results of said work, the reputation of the Mercer Pottery, and then what would be done if employed by Magowan.

Now let us examine the interviews of Magowan with Mr. Wood.

After first meeting him on the street, when Wood spoke to him about the position, he made an appointment to meet him at his house. He then told Wood that they were simply seeking the services of Mr. Barlow, but Wood promptly said that Barlow would not come unless he was employed also (*p. 11*), and he then stated *the success he had made as a practical potter* at the East Trenton Pottery and other works, and stated the amount of profits he made in addition to his salary. (*p. 11.*)

"He also said he knew what kind of a plant we had, and the facilities we had, and estimated the profits if he and Barlow took hold of it. He said they would have to be paid well for their services, as they thoroughly understood the business, and would manufacture specialties for our firm that would result in large profits to us.

"He said he would guarantee *from $50,000 to $60,000 profits. I stated the amount of business we were doing, and presume he based it upon that.*" (*p. 11.*)

Does it require any stretch of imagination to believe every scintilla of this testimony; it is business-like, clear and convincing. Here is a man desiring to better himself; he knew, as we shall show, that then he was only being paid $30 per week, with a precarious share of profits, only agreed to by parol, and he sees the opportunity for a decided beneficial change. Was it strange for him to say he understood the business, for did he or did he not think so, he is clear they will have to be paid well for their services. Yes, but they proposed to increase the profits of the business, and these profits are to be increased by the specialties they are to make.

The next interview with Wood was on the Sunday previous to the execution of the contract, at his house on Brunswick avenue. (*p. 13.*)

"He stated that to give us the benefits of their experience, knowledge and secrets of ware and goods which had never been made here, they would be obliged to ask a high salary or its equivalent. He stated that $3,000 apiece, with 10 per cent of the net profits, was the best they would do."

He said he would stake "his reputation on the profits to be realized that they would not be less than $50,000, and he would not take $10,000 for their share of the profits."

Magowan decided to close the bargain, and then comes one of the peculiar features of this case. Magowan wanted to have his own attorney draw up the agreement, and said that any alterations that were fair should be made. But Wood *insisted* upon having his own attorney draw it.

Wood, at this interview, specified *the specialties they would make.*

"One was manufacture of a superior article of thin porcelain, an article that would be reliable and not be subject to crazage, and also be able to give them a better color than is made—styled Imperial China. (*p. 14.*)

"Underglazed decorated goods for the fine trade. In other words, a class of ware far above the American standard, and which would give us large profits." (*p. 14.*)

These specialties or change in the management were the reasons for the increased compensation—the change *in the manufacture.* (*p. 14.*)

Wood also called attention to the fact that no vitrified china had been made in this country that was reliable; that he had produced for four years previous to that a fair quality of vitrified china. (*p. 14.*)

It is not to be surprised that Magowan states, on page 14: "I could readily see, if his representations were true, very large profits would accrue to us, since we could put upon the market an article superior to anything which had been produced theretofore of American make, and this, with others, were our real incentives for paying such extra large salaries."

Wood professed to have full knowledge of the mixing of colors for underglazed, fine imperial china, and claimed he would bring it out for the first time in a pottery in this country. (*p. 14.*)

The next meeting was at the office of the Trenton Rubber Works, on May 7th, 1883, at which Magowan, Alpaugh, Wood and Barlow were present.

Will examine the testimony of the several parties to this interview.

1. Magowan, on page 15.

Wood stated that they had considered the matter, had further investigated our pottery plant and ascertained our facilities, "and they would not only guarantee but pledge further profits than before." "After bringing up the question of vitrified china and underglazed goods," said he had made a profit for the East Trenton Pottery of $20,000 that year on a small business, and had received $2,000 in addition to his salary, and had manufactured ware there for three years without any crazage whatever.

Coutract which Wood had had prepared, then read. When the clause guaranteeing $2,000 profits was read, Mr.

Magowan immediately objected to having anything to do with a guarantee of that kind. "They insisted they would not enter our service unless with that clause in there, at the same time claiming that they would not take $10,000 for their share of the profits." "Mr. Alpaugh and myself, after hearing their guarantees and many assurances of large profits which had been made by them before for other parties, and not knowing anything about the business practically ourselves, and having over $200,000 invested there and jeopardized, concluded from their guarantees we had the best practical potters in the country," signed the agreement.

2. Alpaugh's testimony, on pages 97 and 98.

Magowan read the agreement; "when he came to the clause guaranteeing the $2,000 over and above the profits, he said that was not according to the understanding, and I objected to it." "I then asked Wood what guarantee we would have that he would make that amount of money for us; he said he would not sell his profits for $10,000, and I then asked him if he knew all about the potting business, and he said he did; that both of them knew all about the firing of the kilns and the mixing of bodies and glazes, and all about the docorating department; and I then asked him about how much money he would expect to make for us, and he said our profits, with our large facilities, and the quality of goods we were going to make, would not be less than $50,000 or $60,000 a year; I told him if we made $40,000 or $50,000 I would be satisfied, and with that assurance I agreed to sign the agreement with Mr. Magowan."

Then the appellees specified what they were going to manufacture, viz.: "Imperial china, and he (Wood) went on to say he knew all about making vitrified china, hotel china and bone china;" he also spoke of underglazed colored goods—said he knew all about that.

Now, what do the appellees interpose to this testimony? They seek to deny not only any representations made by them as to their ability as potters and all guarantees mentioned both by Alpaugh and Magowan, but also any intimation even on their part that they were even potters.

Let us examine briefly the testimony of William Wood. (*p.* 159.)

He testified that the first proposition of hiring came from Magowan—that Magowan said "his object in coming to see me was to engage a manager to manage their pottery;" that he had offered Barlow $3,000 a year salary and ten per cent. of the net profits; that Barlow had declined, owing to his engagement with James Moses.

"He asked me what my present position was worth. I told him I got $30 a week and five per cent. of the net profits, which were paid me at the end of the year, although I had no written agreement to that effect." (*p. 161.*) Told him the profits had yielded me from nothing up to $1,000. "He asked me if $3,000 would not be a sufficient inducement for me to leave East Trenton."

"After saying it was their intention to run the pottery to its full capacity, and if they did they would be able to make $40,000 to $50,000 profit, and that our ten per cent. of that would make our salary very large." (*p. 162.*)

After some remarks about the ware made by the Coxons, Wood says: "I told him that, for the first year or two, they would have to allow a very large amount of claims for bad ware, and that it would curtail the profits. He (Magowan) admitted that fact, but he said if I would come with them he would make it sure that my percentage of the profits should amount to something for me; he said he would guarantee they should not amount to less than $2,000 a year. I asked him if he would put that guarantee in writing, and he said he would; he said he would guarantee it should amount to $2,000 even if they did n't make any profit at all." (*p. 162.*)

This was clearly intended by Wood to offset the clear testimony of both Magowan and Alpaugh, that they never heard of the guaranteed profits until the agreement was read.

Wood further says, on page 162:

"It was only upon his consenting to give us that amount of profits each year, no matter whether they made them or not, that I finally consented to go with them."

It will be borne in mind that this is the man who has just testified that he was then only receiving $30 per week, with 5 per cent. of net profits, and had never received more than $1,000 of profits in any year.

On page 164 he says: "I never made any representation or guarantee as to our ability to increase the production, grade or profit of the pottery. Mr. Magowan never asked me any such question. He never, at any time, asked any guarantee at all from me, and these statements about guarantees are entirely wrong; there was no such thing ever made."

Wood testifies that he again met Magowan on the Sunday afternoon with Barlow; that "he told us to have the agreements drawn, and to meet him and Mr. Alpaugh at the rubber works the following day."

Had the agreements drawn by his attorney and says: "When they say they objected to them they are mistaken."

Now, on cross-examination, this witness said:

That he never made any proposition to Mr. Magowan at all. (*p. 212.*)

Had no recollection of saying what profits he could produce at the pottery. (*p. 212.*)

Did not state to him any specialties he could make. (*p. 213.*)

Wanted it distinctly understood that he did not mention anything as to his capacity as a potter. (*p. 213.*)

That nothing was said about porcelain, vitrified china or imperial china. (*p. 213.*)

Nothing was said at all about the manufacture of underglazed goods. (*p. 214.*)

Q. Did not Magowan state what kind of ware they wanted to have manufactured?

A. A similar kind to that made by James Moses and the East Trenton Pottery.

Q. Did you not state you were able to make that kind of ware?

A. He didn't ask me any questions about what I was able to make.

Q. Did you state anything about that?

A. I don't remember anything about it; he knew very well.

Q, I asked what you said?

A. He asked me no questions about my ability.

Q. And you said nothing about your abilities?

A. No, sir; I said nothing at all in either conversations about my ability.

Again, on pages 215 and 216:

Q. Was anything said by you or Mr. Barlow as to the quality of goods you would make?

A. I have no recollection of anything of the kind being said.

On being pressed, he finally admitted, on page 215, "there was a general understanding—we should make what was called American porcelain; we understand that; how it came about I don't remember."

Then, page 215:

Q. Didn't you state your ability to manufacture what you called American porcelain?

A. I didn't say anything about my ability.

Q. Did you not tell him you could make it?

A. I did not say anything of the kind.

Q. You said nothing about your capacity to manufacture any kind of ware?

Q. He never questioned me upon the subject.

Will the Court believe that a man of ordinary intelligence or business capacity would have entered into such an agreement as this, upon what is testified to by this witness?

On page 218, he denies that at the interview at the Rubber Works he made any statements of his ability to Mr. Alpaugh, and concludes, "they asked me nothing and I made no statement."

A very pertinent inquiry might here be made if this testimony is true, why were the appellants seeking to employ this man?

Now let us consider the testimony of James Barlow.

He admits on page 273, that he told both Alpaugh and Magowan that he did this mixing, superintended the kilns and had the general superintendence of the James Moses Pottery, and did the modeling. That he was then getting $30 per week.

That Magowan offered to pay him after his refusal of $30 per week and ten per cent. of the profits, $60 per week.

On page 275, he says: "Wood told him Mr. Magowan had been to see him and had offered him $60 per week as salary, and also a guaranty profit of $2,000 a year besides, and Mr. Wood told me Mr. Magowan said he would pay me the same if I would consent to come with him along with Mr. Wood."

On page 278, he speaks of the meeting at the Rubber Works. He does not mention, even by way of denial, Mr. Alpaugh's objection to the guaranty profit clause.

This question was then asked him:

"During and in all the conversation leading to this agreement, did you make any representations in regard to your abilities to make any kind of ware successfully, or any particular kind of ware which would render or yield to the firm large amount of profits?

"*A.* None whatever; I was never asked in regard to the matter."

Now on cross-examination, page 334.

I never referred in conversation with Mr. Magowan that I was a potter at all.

Never had any conversation with him on the subject of potteries. (*p.* 335.)

Q. And you state, without any conversation of that kind, he wanted to employ you?

A. Yes, sir; I do.

At the second interview, page 336, he does admit that Magowan told him he wanted him to come as general manager and to change the ware.

Q. But you didn't discuss as to what would be done?

A. He told me he wanted me to make the ware the same as I made it for James Moses.

Q. Did you say you could do that?
A. I didn't say anything of the kind.
Q. Did you say you would do it?
A. He supposed I would.

Now as to guaranty profit of $2,000, page 337, Barlow says he never demanded of Magowan or intimated that he was to guarantee $2,000 per year. Never heard of it until he heard it from William Wood.

He denies making any guarantees at Wood's house on Sunday afternoon, and wants it understood that at this interview there was nothing at all said relating to ware or his capacity to make it.

Page 342, he don't remember whether Mr. Alpaugh, at the meeting at the Trenton Rubber Works, said anything about the kind of goods they were expected to make, or the profits they expected to make.

Probably the views of both of these witnesses may be summed up in the statement of Wood, page 192:

"I never made any guaranty; it is a very unusual thing to ask a practical man to do that; there are so many things that might happen to make bad ware that he has no control over them."

And this led to the question, on cross-examination, page 237:

"Would it be more unusual or more unfair for you to guarantee the result of your work than for your employer to guarantee to you a certain sum out of the profits that were to be based on your own work?

"*A.* I think so."

What is the weight of testimony upon this matter of the negotiations leading up to the contract? Was it entered into by these appellants under the representations, guarantees and assurances which they state were made by these appellees, or did they, without a word as to ability or qualification from either appellee, employ them as managers of the large interests they had in their pottery?

Can it be believed that these men who, by their own statement, were only earning $30 per week at the time, could,

without a word, command a salary each of $3,000 per year, with 10 per cent. of profits, guaranteed to amount to $2,000?

It may be true that the learned Vice-Chancellor was not able to reconcile the contradictions upon this part of the case, but I submit that the facts, circumstances and positive testimony point to but the truthfulness of the appellants' testimony.

II. Results of the Management of Wood and Barlow.

It is an admitted fact that up to the time of the change in the management only granite and C. C. ware had been manufactured at this pottery. Was entire product of Coxon & Co. And it was continued for some six months after Wood and Barlow took charge.

The object in view on the part of the defendants in seeking managers is very apparent from the testimony. It was to produce a class of ware far above the American standard. This was assured to them by the complainants, who guarteed to make their American porcelain, styled Imperial China, underglazed decorated ware for the fine trade, together with vitrified and bone china.

1. First new undertaking was the manufacture of Imperial China, or superior quality of thin porcelain.

Complainants guaranteed this would be superior to any ware made. (*Magowan's test., p. 19.*)

Result.

It was bad, defective in manufacture, and not uniform in color. Was very subject to crazage.

Too large a percentage of thirds—at least 75 per cent. more than in other potteries. (*p. 21.*)

Only drawing from kilns about 60 or 75 per cent. of their capacity. Other potteries were, with like kilns, drawing from $1,900 to $2,100 worth of ware, while they were only drawing $1,500–$1,600 per kiln. (*p. 21.*)

These same kilns *now* drawing from *$2,000* to *$2,200* worth per kiln. (*p. 22.*)

Goods defectively fired. This was both in bisque state and when glazed. (*p. 23.*)

Called attention of both Wood and Barlow to this, repeatedly. (*pp. 24–27.*)

Alpaugh's testimony.

This Imperial China was the ware we guaranteed against crazing. Did this upon representations of Wood and Barlow.

Warranty issued produced. (*p. 374.*)

The first year they were with us we had great complaint of crazed goods. Spoke to Wood and Barlow. They said "goods were fired easy and had too much glaze." (*p. 102.*)

Promised to remedy it, but they did not. (*p. 102.*)

Donoher's testimony.

An experienced pottery salesman, an expert, in fact, in pottery. (*p. 65.*)

The Imperial China Hotel goods first made were returned, and we didn't sell them any more goods. Varied in color, were not uniformly fired, considerable crazage. Crazage due to defect in manufacture.

The difference in color caused by defective firing and mixing. (*p. 69.*)

Such the result of the manufacture of the *first* of the new ware. This may not be classed as a specialty, but as a *staple product;* the result certainly did not demonstrate either proper skill or knowledge on part of complainants.

Complainants meet this testimony in what way?

Wood.

Admitted crazing, but said "we had as small a percentage as any other pottery." Admits soft firing, but don't believe any other pottery had less. (*p. 177.*)

The only explanation as to *thirds*, after admitting "we did make a large quantity of thirds," is that it was on account of the closeness of selection. (*p. 174, 223.*)

Mr. Donoher was always particular, and his goods were always closely selected.

Again, on his cross-examination, he says: "I feel positive that there were *a larger number of thirds made than ought to be*, from improper selections under Mr. Alpaugh's order, by selecting too closely." (*p. 222.*)

But how can selections affect the number of *thirds* made? It is the defective manufacture that caused the rejection of thirds in the selection.

Barlow.

Saw but little crazing.

I never guaranteed against crazing. "You might as well," he says, "guarantee against breakage as againt crazing."

This is preposterous. Breakage would result from want of care merely in handling, but crazage is the result of ignorant mixing and imperfect work.

Barlow, like Wood, attributes the large proportion of thirds to too close selection.

The testimony produced, of Jesse Dean, Wigley, and Wm. Tattler, is to be considered in but one light. They were decorators. In sending goods to them no "run of kiln" could be indulged in; they wanted the best, and they got it for decorating purposes. At best, their testimony is qualified; they say the ware was about the same as others—would craze—and Dean claimed a deduction of 6 per cent. for crazage.

II. Underglazed Decorated China Ware.

This is the ware which was to be one of the specialties which Wood and Barlow claimed they could make, and, as Magowan states, "was one of their specialties, from which we expected to become millionaires."

In this ware the decoration is done while the ware is in the biscuit state, or after its first firing in the green state. It is then dipped with glaze and fired a second time. The decoration may be either hand-painting, as in the fine art

ware made in Europe, or by the process of *transfer printing.* (*p. 31.*)

It was the transfer printing process which was here used. It was first done upon the glaze, and then, as Donoher states, Wm. Wood decided to do it on the biscuit before they were glazed, which, he said, was the only true principle of making underglazed ware.

Wood's ignorance of the history and process of underglaze printing was but too apparent in his cross-examination. (*pp. 209, 210.*)

Magowan says the manufacture of this underglazed decorated ware was commenced in May, 1884; that samples of the ware were produced by Wood and Barlow before the agreement was entered into, and upon their representations that they could produce goods like the samples, we decided to go into the manufacture largely. (*p. 31*)

Went to expense of $3,000 for engraving copper plates. Purchased printing presses, tanks, piping, furnaces, etc.

Results.

A very small proportion of it came out in a clear, nice condition; blurred in the figuring, indistinct, the result of too much firing or the flow of the colors. Nothing like the samples.

Commenced to ship the goods.

Palmer House. Lost contract for $10,000; entire lot of goods returned. (*pp. 34, 71.*)

Parker House and French's Hotel, Boston. Goods returned. Refired and reshipped and returned. (*pp. 34, 71.*)

Lost entire contract of $10,000 with Abm. French & Co.; also their trade. (*p. 73.*)

These parties, thinking so well of the samples, had their names put on goods. Lost business, $50,000 per year, and increasing. (*p. 35.*)

Goods rotten, like chalk. Could break them in your fingers, and would craze immediately. (*p. 35.*)

Defects, in wrong mixture of materials, both in body and glaze and in firing. (*pp. 36, 72.*)

Refer also to goods sent to Monongahela House, Pittsburg. (*p. 38.*)

Importance of this failure, from a commercial point of view, not to be overlooked. (*p. 38.*)

Attention of Wood and Barlow called to these goods. They admitted failure, and staked their reputation they would produce them according to samples. (*p. 38.*)

After return of goods from Boston, "they admitted they couldn't produce the goods as represented." They acknowledged they couldn't do it; they couldn't be made according to the process of being printed on the biscuit, unless made on a *cheap body*, like some English goods. (*p. 39.*)

Where is the slightest scintilla of evidence to bolster up this statement that the English print on a cheap body?

Wood finally admitted "*it was an experiment.*" (*p. 39.*)

The idea of *practical* potters indulging in such an experiment. They held themselves out as practical potters. The very assumption of these duties, in law, makes them responsible. They were contracting as practical potters, claiming *large salaries* as experienced men, and even taking their view of no guaranty as to results, they are liable for the result of their labors.

Can this contract be construed that the defendants must pay, no matter what the result may be of complainants' work, and regardless of the loss sustained by their gross incompetency?

Donoher's testimony on this point must have great weight.

The representations of Wood are clearly set forth. There is no doubt expressed by Wood, not a word of experiment. (*p. 71.*)

Read result of goods made. (*pp. 72–76.*

"I think *rotten* covers the ground." (*p. 73.*)

Effect of goods so made on his trade.

He further says when he came in the firm, in 1885, the underglaze decorated manufacture had exploded, and "I made up my mind I had gotten into the wrong place to make money."

Mr. Alpaugh.

The printing on the glaze was first undertaken, but it ran so irregular in color that we had to abandon it entirely.

Spoke to Wood about it; he said he would have to change his glaze.

Read pages 105 to 108.

Results same as stated by Magowan and Donoher.

Now, what had the complainants to offer in reply to this testimony as to incompetency and loss?

Wood admits the complaints of Mr. Donoher as to running of color on ware printed on the gloss; says "the gloss ran and carried the colors with it." (*p. 181.*)

He further says that Donoher said "that if we would have that ware a success, we should *have to do it on the biscuit*, that the English printed ware was so much nicer than the ware we were doing on the gloss." (*p 181.*)

He said he had had no experience with that ware in this country, although he had in the old country (*p. 181*), yet, on cross-examination (*p. 210*) he admits he had had no experience there except to prepare the colors and the oils.

This is an attempt to get rid of the responsibility, it is the *practical potter* trying to put it upon a salesman. Magowan, Alpaugh and Donoher all agree that Wood said "printing on the biscuit was *the only true* principle in making *underglaze ware.*"

Wood further states that it would be necessary to make a body similar to the body used by the English manufacturers. That they wanted to excel the English in color. "I told him that I didn't believe ware printed on that kind of a body would stand." (*p. 182.*)

Now, the testimony shows that Wood never said a word to either Magowan, Alpaugh or Donoher that it would have to be similar to that of the English manufacturers. He had produced the *samples himself*, and it was *upon his samples* that the firm decided to go on with this ware.

Now *why* was not this body (Imperial China) suitable for this underglazed printing? Has Wood even attempted to

prove it was not? He merely states his belief, "that ware printed on this body would not stand." (*p. 182.*)

Read.

1. Wood swears Alpaugh was satisfied with this body. Ordered ware for his own use.

Comment.

Alpaugh swears he never, *in any way*, dictated the body—knew nothing about it. Relied entirely upon the samples. Didn't even know the body was the Imperial China body. (*p. 353.*)

Ware used at his house a perfect failure.

Never interfered with Wood at all. I knew nothing about the ware. Never threatened to put another man in his place if he did not go ahead. (*p. 355.*)

Now, as to the pretended release of all responsibility by Magowan. Read Wood's account on page 183. He says he went out to the Rubber Works and Magowan said, "from what they had seen of the ware already made, if I would go on making it, they would be willing to release me from all responsibility. They would assume that. I said I didn't want the firm to make any loss; *that as an experiment*, I didn't know how it would turn out." (*p. 184.*)

Read Magowan, page 358.

"Wood *never* came out to the Rubber Works to see me about the underglaze goods. I never insisted it should be made on that body. I knew nothing about the *ingredients or the mixing*. I never said I would release him from all responsibility, *because we solely depended* upon them and their knowledge.

Either Wood did not know or was deceiving. The testimony shows that he *never before* had made any of this ware, but that, as he afterwards confessed, he was only experimenting.

This appears clearly from his cross-examination.

He was not practically brought up to this branch.

The invention is a matter of doubt to him.

In fact, he don't claim to be an expert. (*p. 231.*)

His who defence rests upon two points.

1. That the Imperial china body was unsuitable for this ware.
2. That the firm compelled him to use it.

Now we insist:

(1.) That the body had nothing to do with his failure. Printing on the biscuit can be done on any body, and is done.

Maddock clearly shows that it is the GLAZE and *not* the body that makes the success or non-success. (*p. 141.*)

2. The body was of Wood's own mixing. The entire manufacture was under his control.

The testimony of Barlow did not differ much from that of Wood, and he admits that Wood said: "I want to know more about it. It is only an *experiment*, and I want to have more experience before I send it through in quantities." (*p. 318.*)

He said he did not know anything about it, and had nothing to do with the making of it. (*p. 347.*)

III. Vitrified China.

This was among the specialties Wood claimed he would introduce.

The result was an absolute loss. (*Magowan's test., pp. 27, 28; Donoher's test., pp. 66, 67.*)

"They could not furnish enough to put on the market for sale." (*Alpaugh, p. 109.*)

IV. Bone China.

Wood claimed that he could make it in large quantities and at a profit. (*p. 29; p. 109.*)

Large orders were taken by Mr. Donoher; only got 25 per cent. of ware that could be worked off; on account of loss, obliged to discontinue manufacture. (*pp. 30, 110.*)

Donoher, on page 68, stated that the product was an entire failure.

The Vice-Chancellor seems to have considered, in his opinion, that these attempts to make the different class of ware were mere experiments; that the appellants so understood it. He admits that the appellees represented themselves as expert manufacturers of pottery, but at the same time says, they had demonstrated their inability to manufacture the specialties thought so desirable by appellants. That after these demonstrations the appellants had no right to go farther.

The difficulty with this view of the case is, that it is not supported by the evidence. These men were not employed to experiment, and the learned Vice-Chancellor cannot find a word in the testimony bearing out such a suggestion. They were employed on their own representations as to their ability to make these very goods which they try to term experiments; and unless they had made representations as to their ability, is there the slightest probability that the change in the manufacture would have been made?

To adopt the theory of the Vice-Chancellor is to adopt the testimony of Wood, to the exclusion of Magowan and Alpaugh, and the confirmatory testimony of Donoher.

The Vice-Chancellor can find no fraud in the conception or execution of this contract. In other words, he must then have believed that they were each earning at the time a salary of only $30 per week, and without a word as to their capability to manufacture ware or capacity to superintend a pottery, had obtained an engagement at a salary of $3,000 per year each, with the guaranty profit of $2,000.

V. Losses sustained under the management of Wood and Barlow.

From the journal produced by E. C. Mulford, the bookkeeper, it appears (*p. 129*):

At the close of the first six months—	
Merchandise account to profit and loss, . . .	$127,049.79
Profit and loss to sundries, ...	124,126.65
Showing a profit of	$2,923.14
At the close of the next six months—	
Merchandise account to profit and loss, . . .	$87,865.44
Profit and loss to sundries, ...	103,149.03
Showing loss of	$15,283.59

On January 1, 1886—

Merchandise account to profit and loss, . . .	$291,120.38
Profit and loss to sundries, ...	320,933.88
	$29,813.50
Making a net loss, to January 1, 1886, of . .	$42,173.95

The returning book produced showed the value of underglazed ware, actually returned, as $10,822.20. This did not include other goods returned.

Robert Gruesser (*p. 87*), warehouseman, testified that when he went in employ of defendants, January 1, 1886, he found $15,000 of this underglazed decorated ware on hand. Offered it for $3,000; this was refused, and had to dispose of it to auctioneers for from 25 to 30 cents on the dollar.

The loss to appellants, from the manufacture of the underglazed decorated ware and vitrified china, is contained in the testimony of Magowan, Alpaugh and Donoher, and has already been referred to under the title of "Results of the Management."

The foregoing presents an outline of the testimony in this case, giving the facts relating to inception and making of the contract, the results of the management and the losses sustained by the appellants.

These appellees have come into a court of equity to enforce the performance of the agreement set out in their bill, and the only ground upon which they can have any standing is, that the enforcement of the agreement would involve an accounting of the profits of Alpaugh and Magowan during the term named in the agreement.

They cannot ask such enforcement unless they come with clean hands; if fraud is shown, not only in the representations made leading to the contract, but also in the performances made, they cannot recover.

Our insistment is that not only were these fraudulent representations made, but these appellants suffered great pecuniary loss by reason of such representations.

The appellees were bound to have the skill and knowledge requisite for the employment undertaken. *2 Pars. on Contracts, p. 54.*

The contention of the Vice-Chancellor that these appellees were good practical potters, and that they did for the appellees all that they were bound to do under the contract, is not, we submit, borne out by the testimony.

The learned judge evidently overlooked the fact that this was not an ordinary hiring of operatives, but that by the very express terms of the agreement, "they were to take the entire charge of the manufacturing department of said pottery and to give their whole time, labor, and skill towards the proper management of said business."

These appellees held themselves out to be skilled workmen, able not only to manage this pottery and to materially raise the grade of its productions and the quantum of its profits.

The undertaking of this employment implied a high degree of skill on their part, and they were bound faithfully to perform their duties.

They demanded compensation commensurate to what they claimed would be the value of their work, far in excess of what even they themselves had ever received.

The losses sustained were not mere "incidental losses" in the course of employment, as they were in the case of *Page* v. *Wells, 37 Mich. 415, 421,* cited by the Vice-Chancellor, but they were heavy losses, the result not only of bad faith but absolute dishonesty on the part of these appellees.

See 1 Add. on Cont., p. 509, 8 Ed.
Teare v. *Prentice, 8 East. 352.*
Boston v. *Butler, 7 East. 484.*

The grounds upon which the Vice-Chancellor advised the decree below should be briefly examined.

1. The continuance of the appellees in their employ by the appellants, notwithstanding the admitted failure of what the Vice-Chancellor terms experiments.

That such retention was an error is but too apparent, and the fact that the appellants treated them with great leniency is clearly shown by the testimony.

The appellees claim that it is a waiver of any right upon the appellants to charge them with the losses sustained.

But it will be seen by the testimony that a long period elapsed before the actual result of the work of the appellees was apparent.

At first they only undertook the manufacture of the ordinary granite and C. C. ware (*Wood's test., p. 168*), and at the end of six months a profit was made from the sale of the granite and C. C. ware, most of which was made by the Coxons, and it was not until several months elapsed that they were able to place upon the market any Imperial China, and it was a year before a complete kiln was brought through.

Upon the very first complaint being made as to this ware, Magowan testifies that they thought of discharging them, and, as he states, would have done so but for the difficulty in their getting any one else to take their places.

The underglazed decorated ware, the principal cause of loss, was not undertaken until 1884, and, as Donoher testifies (*p. 79*), it was not until he came into the firm, in May, 1885, that the manufacture of this ware had to be discontinued.

In December, 1885, when the account of stock showed the loss of over $29,000, as hereinbefore shown, the services of the appellees were dispensed with, although they did not leave until March. As Mr. Magowan states on page 55, "we couldn't get any body else to take their place until then, and they seemed disposed to continue as long as we would allow them."

2. Great weight was placed by the Vice-Chancellor upon the letters and circulars of the firm, in reference to the goods manufactured during part of the time these appellees were managers.

These, it will be seen, were trade circulars, and they allude only to these classes of ware made, viz.: the Imperial China, Vitrified Hotel China and Sanitary Earthenware.

They were all written and issued, with one exception, in 1884. They were based upon the direct assurance and unqualified guarantees made by the appellees, not as to one class of ware, but as to all undertaken. So impressed with

these guarantees were the appellants that they did not hesitate to issue the iron-clad warranty given on page 374.

After the crazage of the goods was discovered, and they commenced to be returned, no further circulars were issued. As Mr. Donoher says, on page 81: "circulars stating that they had first-class manufacturing potters at the head of the establishment were not sent out after he was connected with the firm." This was in May, 1885.

As to the Vitrified China circular, it distinctly appears in evidence, that it was issued based upon the samples made by these appellees upon the pottery, and upon their assurance that they had made the goods for a year, and there was no experiment about them. As Magowan states on page 27, "orders came in, but we could not fill them; they commenced to manufacture but found they couldn't produce it; what they brought through was at a loss of considerable money, *and the fact that we had made representations to the trade throughout the whole country, was a loss to us in reputation.*"

The Sanitary Earthenware has not been in the case at all.

There are no circulars or letters referring to the under-glazed decorated ware or bone china.

The letter of Nov. 5th, 1885 (*p. 362*), from which the Vice-Chancellor quotes (*page 390*), was not an extract from instructions issued to Wood. This letter of instruction was called forth by the bad management of these appellees.

3. That a credit "towards profits" was directed to be given each appellee in July, 1884, and September, 1885.

This the Vice-Chancellor insists "will stand immovably against the contention of the defendants."

That such an entry was made appears by the testimony of Magowan, on page 51, and from the books themselves. Wood had, in July, 1884, asked for their share of the profits. Magowan stated, "we have not made any profits, and you know it; you have not made us the money you represented and guaranteed." That he took Wood to the book-keeper and said: "I won't give you a credit for two thousand dollars when we haven't made any profits; but I will give you a credit of two thousand dollars toward profits if we make them." This was carried out.

Not a word was said about guaranteed profits, and Mulford, the book-keeper, distinctly swears, on page 152, that neither Wood nor Barlow ever applied to him for payment of profits or guaranteed profits.

This first credit is the only one with which Mr. Magowan had anything to do; the second, in 1885, was as Mulford testifies, entered by him on his own responsibility and at the request of the appellees.

We submit that neither entry has the effect claimed by the Vice-Chancellor; that but one was authorized by the appellants and had no reference whatever either in the request for the same by the appellees or in the entry itself, to what is termed the guaranteed profits under this agreement. There is no evidence that Mr Alpaugh ever knew anything or was ever consulted in reference to this matter.

We submit, that it appears from the proofs in this case, that no profits were made by these appellants, and that no accounting can be had by them as prayed for by their bill of complaint, that they have no standing in a court of equity, and their bill should have been dismissed in the court below.

G. D. W. Vroom,
Counsel for Appellants.

MacCrellish & Quigley, Book and Job Printers, Trenton, N. J.

In Chancery of New Jersey.

Between
WILLIAM WOOD ET AL.,
Complainants,
and
SPENCER M. ALPAUGH ET AL.,
Defendants.
} *On Bill, &c.*

BILL FOR RELIEF.

[Filed July 29th, 1886.]

To the Honorable Theodore Runyon, Chancellor of the State of New Jersey:

Humbly complaining, show unto your Honor, your orators William Wood and James Barlow, of the township of Lawrence, in the county of Mercer and State of New Jersey, that on or about the seventh day of May, eighteen hundred and eighty-three, your orators and Spencer M. Alpaugh and Frank A. Magowan, of the city of Trenton, New Jersey, the defendants hereafter named, entered into an agreement in writing, as follows:

"Agreement made this twenty-seventh day of May, A. D. eighteen hundred and eighty-three, between Spencer M. Alpaugh and Frank A. Magowan, of the city of Trenton, New Jersey, party of the first part, and William Wood, of the township of Lawrence, and James Barlow, of the city

of Trenton, in the county of Mercer and State of New Jersey, parties of the second part, witnesseth: That whereas, the said party of the first part own and operate a pottery manufactory, in the city of Trenton, heretofore known as the pottery of Coxon and Company; and whereas, they have agreed to employ, and have employed, the said parties of the second part, respectively, to superintend and manage the manufacturing part of the business of said pottery, including the decorating department, taking entire charge of the works, employment of hands and selection of materials.

"Therefore, it is agreed between the said parties as follows: The said Alpaugh and Magowan have agreed, and by these presents do agree to employ, and do hereby employ, the said William Wood and said James Barlow, to take the entire charge of the manufacturing department of their said pottery, including the decorating department, for the term of three years and two months from the date of this agreement.

"And the said parties of the second part do hereby agree to enter the employment of the said party of the first part as aforesaid, and to take the entire charge of the manufacturing department of said pottery, and to give their whole time, labor and skill towards the proper management of said business during the term aforesaid.

"And the said party of the first part do agree that they, the said parties of the second part, shall receive for their said services, during the said period, the salary of three thousand dollars a year each, payable in weekly payments, and do further agree that said Wood and Barlow shall also have and be entitled to ten per cent. of the net profits of said business during said period.

"And said party of the first part do guarantee that said profits shall bring into said party of the second part a sum of at least two thousand dollars a year to each of them; and said salary and profits to begin on the twenty-first day of May, eighteen hundred and eighty-three.

"In witness whereof, the said parties have hereto set their hands and seals the day and year first above written.

"Signed, sealed and delivered in the presence of
"GEO. R. COOK.
Trenton, N. J., May 7, '83.

SPENCER M. ALPAUGH, [Seal.]
F. A. MAGOWAN, [Seal.]
WILLIAM WOOD, [Seal.]
JAMES BARLOW, [Seal.]"

And your orators further show that, at that time, the said defendants, as partners, under the name of Alpaugh & Magowan, were engaged in the business of manufacturing potters, in the city of Trenton, and that your orators were practical operatives in pottery work; and that, in pursuance of said agreement, your orators entered into and upon the discharge of the duties required of them under the terms of the aforesaid agreement, and continued so to discharge all the duties required of them in their respective departments during the time specified in said agreement; and that said agreement expired, by its own limitation, on the seventh day of July, eighteen hundred and eighty-six.

And your orators further show that their compensation provided for by said agreement, to be paid to them weekly during said term, has been paid up to the time of said termination thereof, except a small balance due to each of them, but that no part of the profits of the business has been in any way paid to or accounted for to your orators.

And your orators further show that, by the terms of the said agreement, ten per cent. of the net profits of the said business, during the period specified in the aforesaid agreement between said defendants and your orators, were to be paid to your orators for their services, in addition to the salary of three thousand dollars a year to each of them.

And your orators further show that they have applied to the said defendants, both before and since the expiration of said agreement, and requested them to come to an account and settlement of the said profits of said business during said term; and that if the said profits should not bring in to each of your orators the sum of two thousand dollars a year, then to pay to your orators the said sum as guaranteed by them in their said agreement.

And your orators further show that they have no knowledge of the accounts kept by the said defendants of their said business; that no account or statement of the profits thereof has ever been rendered by said defendants to your orators, and your orators have had no access to the books kept by said defendants, and are utterly ignorant of what the profits of said business have been during any of the

time your orators were in their occupation under said agreement.

And your orators further show that said defendants, although promising to settle, have neglected and refused to come to a final settlement with your orators of the said profits of said pottery business during the time aforesaid.

And your orators charge that, upon a true account and just settlement of said business of said defendants during the aforesaid term, it would appear that there was a large amount of net profits, and of which there was due to your orators jointly the share or sum of ten per cent.

In consideration whereof, and forasmuch as your orators are entirely remediless in the premises according to the strict rules of the common law, and can only have relief in a court of equity, where matters of this nature are properly cognizable and relievable.

To the end, therefore, that the said Spencer M. Alpaugh and Frank A. Magowan may, upon their several and respective corporal oaths, full, true, direct and perfect answer make to all and singular the matters hereinbefore stated and charged; and that an account may be taken of all and every the affairs, dealings and business transacted by the said defendants in carrying on the pottery business during the term specified in the agreement aforesaid, between said defendants and your orators; and that the said defendants may produce all books of account and other books of the said firm, and all their vouchers and papers connected with said business during said term and showing any of the transactions of said business; and that the said defendants may give to your orators full, true and particular accounts of all receipts and expenditures of said pottery business during the time aforesaid; and that the said defendants may be decreed to pay to your orators ten per cent. of what shall appear to be the net profits of said business during said period, or if, on said accounting, it shall appear that the said net profits did not amount to a sum sufficient to make the shares of your orators, respectively, amount to the sum of ten thousand dollars a year to each of them, then that the said defendants may be decreed to pay to your orators said profits at the rate of ten thousand dollars a year to

each of them during said period; and that your orators may have such further and other relief in the premises as the nature of the circumstances of the case may require and to your Honor shall seem meet.

May it please your Honor to grant unto your orators a writ of subpœna of the State of New Jersey, to be directed to the said Spencer M. Alpaugh and Frank A. Magowan, thereby commanding them, at a certain day and under a certain penalty therein to be limited, personally to be and appear before your Honor, in this Honorable Court, and then and there full, true, direct and perfect answer make to all and singular the premises, and further to stand to, perform and abide such order and decree therein as to your Honor shall seem meet, and your orators will ever pray, &c.

JAMES S. AITKIN,
Solicitor and of Counsel with Complainants.

ANSWER.

The joint and several answer of Spencer M. Alpaugh and Frank A. Magowan, defendants to the bill of complaint of William Wood and James Barlow, complainants:

These defendants, answering, say that it is true, as charged in the said bill of complaint, that on the seventh day of May, eighteen hundred and eighty three, an agreement of the character and general purport set forth in the said bill of complaint was made and entered into between these defendants and the said complainants, but for greater certainty as to the terms of said agreement these defendants pray leave to refer to the original agreement when produced.

And these defendants, in further answering, admit that at the time of the execution of the said agreement they were in partnership under the name of Alpaugh & Magowan, and were engaged in the business of manufacturing potters in the city of Trenton, in the State of New Jersey.

And these defendants, in further answering, say that they are not either of them practical potters, and are unskilled in the practical conducting of the manufacturing part of their said business, and, of necessity, in conducting the same, are compelled to rely upon the coöperation of those claiming to be skilled manufacturing potters; that at the time of the execution of the said agreement the said complainants professed and represented themselves to these defendants as skilled and experienced workmen and fully capable of superintending and conducting the pottery of these defendants, and that they, the said complainants, would so manage the entire manufacturing part of the said pottery, including the decorating department, employ all hands and select the materials to be used in the manufacture of pottery, and so conduct the said business as to largely increase the production of said works, improve the grade of ware manufactured and cause large profits to accrue to these defendants.

And these defendants, in further answering, say that having a large capital invested in the said pottery business, the amount by them invested exceeding two hundred thousand dollars, and having very large interests at stake, they were desirous of having the said business so conducted that the profits thereof would warrant the large outlay they had made, and with this object in view, these defendants entered into the contract for the employment of these said complainants, and these defendants insist that the so doing they relied entirely upon the representations so as aforesaid made by the said complainants.

And these defendants, in further answering, say that the representations of great skill and ability on the part of the said complainants to conduct the said business alone induced them to agree to pay to the complainants, salaries far in excess of the ordinary salaries, or compensation, of workmen in similar positions in other potteries.

And these defendants, in further answering, admit that the said complainants entered upon the discharge of their duties as alleged in the said bill of complaint, and they further say that said complainants continued in their employ until discharged by these defendants in the month of March, eighteen hundred and eighty-six.

And these defendants, in further answering, deny that the duties required by the said complainants were duly discharged by them as required by the said agreement, and insist that, instead of faithfully and in a workmanlike manner performing their said duties, the said complainants willfully neglected the interests of these defendants and unskillfully conducted the manufacturing department of said pottery, destroying large quantities of material by unskillful mixing and workmanship, and large quantities of ware by the unskillful burning of kilns, and further concealing craftily from these defendants the evidence of their misconduct, and also caused to be expended large sums of money for materials and appurtenances to said pottery unnecessary for said business, and which have never been used and never can be used in said business, thereby entailing great loss and damage to these defendants.

And these defendants, in further answering, say that the said complainant William Wood, in employing hands for these defendants under the said agreement, acted fraudulently in that he employed incompetent men at excessive rates, and by false entries and pretended hiring of men caused great loss and damage to these defendants.

And these defendants, in further answering, say that after discovering and being fully satisfied of misconduct of the said complainants, they discharged them from their employ.

And these defendants, in further answering, admit the payment of the weekly compensation to the said complainants, as alleged in the said bill of complaint, and they further admit that no payment of profits or on account of profits has been made to the said complainants for the reason, as these defendants charge and insist, that no profits are due and payable to the said complainants, and that the losses sustained by these defendants by reason of the mismanagement and unskillful operation of said pottery by the said complainants, are chargeable to the said complainants.

And these defendants, in further answering, admit that an accounting and settlement of profits has been applied for by the said complainants; and these defendants, in answering, say that in reply to the said application they have denied and now deny that any profits were or are due to the

said complainants on an accounting, and these defendants insist that there is no liability whatever on the part of these defendants to the said complainants under the said agreement.

And these defendants, in further answering, say that books of account of the business and transactions of said partnership have been at all times kept since the date of the agreement aforesaid, and these defendants are ready and willing to produce and prove the said books and accounts in such manner as this Honorable Court shall direct.

And these defendants deny that any other matter or thing in the said complainants' said bill of complaint contained, material or necessary for these defendants to make answer unto, and not herein and hereby well and sufficiently answered, confessed or avoided, traversed or denied, is true, to the knowledge or belief of these defendants. All which matters and things these defendants are ready and willing to aver, maintain and prove, as this Honorable Court shall direct, and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

G. D. W. VROOM,
Sol'r and of Counsel with the Deft's.

STATE OF NEW JERSEY, *ss.*—Frank A. Magowan, one of the above-named defendants, being duly sworn, on his oath saith that the matters and things set forth in the above answer, so far as relates to the acts of the defendants, are true, and so far as relates to the acts of others, he believes them to be true.

F. A. MAGOWAN.

Sworn and subscribed before me this 12th day of October, 1886.

ANDREW JAMES SMITH, *M. C. C.*

GENERAL REPLICATION.

TESTIMONY.

Transcript of stenographic report of the evidence, etc., adduced upon the trial of the above entitled cause, at the hearing thereof before His Honor John T. Bird, Vice-Chancellor, at Trenton, on Thursday the 30th day of December, A.D. 1886.

Mr. Aitkin for complainants, and Mr. G. D. W. Vroom and Mr. Barker Gummere for defendants.

Frank A. Magowan, one of the defendants herein, being duly sworn, on his oath says:

Direct examination (by Mr. Vroom):

Q. What is your name and occupation, Mr. Magowan?

A. Frank A. Magowan; manufacturing potter; I am also engaged in the manufacture of rubber goods.

Q. State your residence, please.

A. Trenton, New Jersey.

Q. How long have you been engaged with the pottery establishment in Trenton?

A. About four years.

Q. What was the name of the firm with which you were connected originally?

A. Coxon & Company.

Q. And the works are situated where?

A. On Clinton street, corner of Ott street.

Q. And it is the works now known as the Empire Pottery works?

A. It is now known as the Empire Pottery.

Q. The Empire Pottery. It is now kept by whom?

A. Alpaugh, Magowan & Co.

Q. The company is constituted by whom?

A. Mr. Thomas P. Donoher.

Q. He became a member of the firm about when?

A. I think about two years ago.

Q. In May, 1885. You know the complainants in this case, William Wood and James Barlow?

A. Yes, sir.

Q. How long have you known these complainants?

A. I have known them simply—I have known them for

about three years, or a few days before we engaged them. That was when I met them for the first time.

Q. They were then employed by your firm of Alpaugh & Magowan?

A. Yes, sir.

Q. Do you remember what year that was in? (Handing witness a paper)—Here is a paper, what is the date of it? That will show you the year.

A. 1883.

Q. In 1883. You say that you first became acquainted with these complainants a short time before May, 1883?

A. Never met them only within a week before.

Q. Under what circumstances, or why did you meet them?

A. We were having—we had no managers for our pottery, and we had a large amount of money invested there, and it was necessary to secure some good, practical man.

Q. The reason that you had no manager there was owing to what fact, Mr. Magowan?

A. Owing to the fact that the former managers—

Q. Give their names.

A. Jonathan Coxon and Charles Coxon had manufactured ware that had proved worthless and had jeopardized the assets of the concern.

Q. And you had bought out the Coxon interest?

A. We bought out the Coxon interest and we were without managers.

Q. Was it with a view of securing persons for the running of the pottery that you saw Mr. Barlow and Mr. Wood?

A. Only that.

Q. Which one did you see first?

A. Mr. James Barlow first.

Q. Do you remember about when it was that you saw him, and where?

A. It was sometime in the month of April, 1883.

Q. Sometime in the month of April, 1883—was it in reference to this matter of coming to you that you saw him?

A. It was purely in reference to engaging his services for our pottery.

Q. What took place at that interview?

A. I made it known to Mr. Barlow that we were obliged

to get the best practical men we could to manufacture our ware and manage our pottery; I presumed that he was aware, and stated so, that the Coxons were no longer managers of the pottery, and I talked to him relative to securing his services, and manufacturing our ware; we had an interview on the subject, and I asked him many questions about his success as a practical man, to all of which he replied favorably; the result was that I arranged to see him another time, and left him; this was all in his house.

Q. It was in his house in Trenton?

A. Yes, sir.

Q. When did you see William Wood, the other complainant?

A. I met Mr. Wood after that, and made an appointment at his house, or arranged to see him at his house on Brunswick avenue, and the subject of the interview turned out the same as with Mr. Barlow; the object was the securing of his services, but we were simply seeking the services of Mr. Barlow, as we thought that they would be ample, but Mr. Wood assured us that Mr. Barlow would not connect himself with our pottery unless he (Wood) went there also, and he cited the success he had made during his career as a practical potter.

Q. Who did?

A. Mr. Wood—at the East Trenton pottery and at other places; stating the amounts of profits made and shares of profits he secured himself in addition to his salary; he also stated that he knew what kind of a plant we had, and what kind of facilities we had, and estimated the profits that could be made there, provided he and Barlow took hold of it; he also stated that they would have to be paid very well for their services, as they thoroughly understood the business, and could manufacture specialties for our firm which would result in large profits to us.

Q. You say large profits. What do you mean by that; is that as definite as they state it?

A. Well, they stated—Mr. Wood stated at that time—it was also confirmed by Mr. Barlow afterwards—that he would guarantee to me from fifty to sixty thousand dollars profits; I stated the amount of business we had been doing, and I presume they based it upon that.

Q. Was that to be based upon the production which you then had at the pottery, or an increased production?

A. That was based on the production that had been and which was increased the next year.

Q. Were the profits increased with the increased production?

A. Always.

Q. Did he say so?

A. Yes, sir.

Q. When did you next see Mr. Barlow, Mr. Magowan?

A. I next saw Mr. Barlow the next day.

Q. Yes; where?

A. At our office.

Q. At your office, where?

A. At the Trenton Rubber Works.

Q. Was he alone?

A. He was alone.

Q. Who was present?

A. Nobody but Mr. Barlow and myself.

Q. Did you talk over this matter?

A. Talked over the matter, and it was simply a repetition of former guarantees of success and of large profits, and he reiterated Mr. Wood's statements that he would not join in the management or would not take hold of the management of the pottery unless he was accompanied by Mr. Wood, and that a satisfactory arrangement had to be made with Mr. Wood in order to secure his services; this talk was with Mr. Barlow; I talked salary to him, and found that $3,000 as salary was what he desired; after talking a little longer on the same subject, all about the amount of money involved in profits and salary, he departed.

Q. Did he speak anything about the character of the ware that he would make if he came with you?

A. That was one of the great incentives for our securing his services that he called my attention to; he stated that he had manufactured and managed in its entirety the Mercer Pottery, and knowing that James Moses, or the Mercer Pottery, had been the most successful in Trenton, and had made the most profit, why, I asked him many questions in connection with his management there; I asked him if he was the originator and modeler of their various shapes

which sold largely to the trade and realized large profits; he said he had made those shapes, had originated those shapes; he also stated that any reputation the pottery had secured for their ware was the result of his mixings; in fact, he was the maker of the ware; he also pointed out the fact that they had a good name for good workmanship and manufacture of the ware, and I asked him if he could carry out the same policy, and would guarantee to do it, in our place, and he said he would, and with Mr. Wood connected with him a bigger success would be insured, and the fact that we had a larger works than the Mercer Pottery would secure larger profits; in addition to this, he called attention to the fact of some specialties that they had, and which Mr. Wood would talk about, which would still increase our profits; after calling attention to the fact that I was going to see Mr. Wood again, he departed.

Q. You did go to see Mr. Wood again, did you not?

A. Yes, sir; I went to his house on Brunswick avenue.

Q. Was anybody present excepting Mr. Wood and yourself?

A. No, sir.

Q. Did you discuss this matter of the contract, or of entering into your service I mean?

A. I went there and received from Mr. Wood the best proposition he would make to come to our pottery with Mr. Barlow.

Q. He then made a proposition to you?

A. Yes, sir; he then made a proposition.

Q. What was it, Mr. Magowan, substantially?

A. He stated that, to give us the benefits of their experience, knowledge and secrets of ware and goods, which had never been made, they would be obliged to ask a high salary or its equivalent. He stated that three thousand dollars apiece with ten per cent. on the net profits was the best they could do. I talked the matter over with him further, regarding the benefits to be derived by us in lieu of paying such high prices, and after he assuring us and staking his reputation on the profits to be realized, he stated they would not be less than fifty thousand dollars, and that he would not take ten thousand dollars for their share of the profit, why I decided to close the bargain with him, and told him

to have an agreement drawn up. At first I wanted it drawn up by our own attorney, and told him that any alterations that he wanted to make afterwards, that were fair, we would agree to. He insisted upon having his own attorney draw it. I told him to go ahead, and that any fair agreement I would sign. I left there with that understanding.

Q. You spoke about his stating that they had certain specialties; did he specify those during this conversation?

A. Yes, sir.

Q. What were they?

A. One of his specialties was the manufacture of a superior article in thin porcelain; that is to say, an article that would be reliable and not be subject to crazage, and also be able to give them a better color than is made.

Q. What kind of china?

A. What is styled imperial china; also another specialty was the manufacture of imperial china under-glazed decorated goods for fine trade; in other words, a class of ware that was far above the American standard, and which would give us large profits. He also called attention to the fact that no vitrified china had been made in this country that was reliable; that he had produced for four years previous to that, a fine quality of vitrified china. He showed me a piece, in his house, of a toilet set that had been manufactured, he said, three or four years before, and he assured me then that he could produce vitrified china like that sample in large quantities. I could readily see that if his representations were true, very large profits would accrue to us, since we could put upon the market an article far superior to anything which had been theretofore produced of American make, and this, with others, were our real incentives for paying such extra large salaries.

Q. You spoke about his talking about the mixings a moment ago; you mean the mixing of what?

A. The mixing of bodies and glazes, namely, colors; the mixing of colors for under-glazed, fine, imperial china.

Q. You say he professed to have full knowledge of that?

A. Yes, sir; and claimed that he would bring it out for the first time in our pottery in this country.

Q. This grade of goods that you have just mentioned?

A. Yes, sir.

Q. All this was gone over at this interview, Mr. Magowan?

A. Yes, sir.

Q. You say that he was to have prepared, then, this agreement; when were you to meet, soon afterwards?

A. The day after, the following afternoon, at the Trenton Rubber Works office; Mr. Alpaugh and myself met Mr. Wood and Mr. Barlow there, on the 7th of May.

Q. Was anybody else present besides Mr. Alpaugh and yourself and the complainants?

A. Nobody else was present at the interview; there were plenty of clerks in the office; one of them witnessed the agreement.

Q. What was done after they got there?

A. Mr. Wood was introduced, I believe, then for the first time, to Mr. Alpaugh; Mr. Alpaugh had been simply introduced by me to Mr. Barlow before that; we talked over matters in a social way first; then we got to business; Mr. Wood, as well as Mr. Barlow, said that they had further investigated our pottery plant, and had ascertained our facilities and advantages for the manufacture of large quantities of goods, and they thought most favorably of our position, and they would not only guarantee, but pledge further profits than they stated before; Mr. Wood did most of the talking, but Mr. Barlow coincided with him; after bringing up the question of vitrified china and under-glazed goods, and also calling attention to the fact that he had made a profit at the East Trenton Pottery Company of $20,000 that year on a small business, and received $2,000 as his share in addition to his salary, he also stated that he had manufactured ware there for a period of three years or over, and without any crazage whatever; that is the record that was made there; he went on to state that the expenses of the pottery would not only be decreased, but the profits and output would be increased, and he thought we had a very nice, large business to commence with, and a much larger business than he had enjoyed himself at the East Trenton Pottery Company, where he had been connected; after Alpaugh had asked him similar questions regarding the

guarantees and the profits, to all of which they replied favorably, we proceeded to read the agreement which Mr. Wood handed.

Q. Was that read?

A. Yes, sir, that was read; and when we read it we noticed that it was different from that which was agreed upon.

Q. That is, between Mr. Wood and yourself?

A. Yes, sir; for instance, the clause in it relating to a guarantee of $2,000 profit was in there. His attention was called to that fact by me, and Mr. Alpaugh immediately objected to have anything to do with a guarantee of that kind. We both thought we couldn't agree to anything of that sort; that they were the practical men themselves; would have entire control of the manufacture of the goods, and entire control of their own knowledge of the business; and, inasmuch as we were willing to buy just what materials were required to carry out their policy, certainly, when they guaranteed a profit of between $50,000 and $60,000, and had us pay them a salary based on that amount of profit, we thought it was little for them to assume the risk of making a share of the profits over which they had entire control; but we talked the matter over for considerable length of time, and Mr. Wood gave very plausible reasons why that should be put in there, one of which was that he had been interested in profits before where he had been managing potteries, and the books had been kept in such a manner, and the stock had been underestimated so as to deprive him of a fair share of the profits which had been agreed to be given. I told him that that would not be the case in our pottery; that he would have a perfect right to know everything he wished about the books, and to look at them any time he chose, and he could also, in company with us or one of our book-keepers, take all the stock and inventories, and nothing would be done except by mutual consent; and if any profit—no matter what profit was made—it would be truly shown; but they insisted that they would not enter into our service unless with that clause in there, at the same time claiming that they would not sell their share of the profits for the amount that was stated in there; that they

would not take $10,000 for their share of the profits. Mr. Alpaugh, as well as myself, after hearing their guarantees and many assurances of the large profits which had been made by them before for other parties, and not knowing anything about the business practically ourselves, and having over $200,000 invested there and jeopardized, we concluded that from their guarantees we had the best practical potters in the country, and that was an incentive for us to sign the agreement. We thought if their guarantees of large profits—fifty or sixty thousand dollars per year—were carried out, we were perfectly—[interrupted].

Objected to by Mr. Aitkin.

Q. This is the agreement, Mr. Magowan. (Showing witness a paper.) I will ask you whether this was the agreement that was signed at that time? It was signed in duplicate, was it not?

A. It was signed in duplicate. Yes, this is the agreement that was signed.

Q. Whose handwriting is that in—the interlineation there?

A. That interlineation is Mr. Wood's.

Q. No; that clause, I mean.

A. That is mine; done in their presence at the time they were there.

Mr. Vroom—I don't suppose, Mr. Aitkin, there is any dispute about that being the agreement?

Mr. Aitkin—Well, we can prove it by the witness. There is a dispute about that interlineation.

The Witness—That clause was inserted in the presence of Mr. Wood and Mr. Barlow and Mr. Alpaugh. The clause was there before we signed the agreement.

Mr. Aitkin—The agreement was executed in triplicate.

Mr. Vroom—I didn't know that.

Q. Well, Mr. Cook was a witness to all of that.

Mr. Aitkin—I don't suppose he would know anything about this clause.

Q. The clause marked star, inserted before signing "Trenton, New Jersey, May 7, 1883." If it is not admitted I will have to bring Mr. Cook afterwards. I supposed that it

would not be necessary to do that, if there is no objection made to the other agreement. I presumed they were all right until I came to examine them. After the contract was executed, was that all that took place at the time?

A. That was all that took place at the time.

Q. That is all that took place at the time. Under the contract, Mr. Magowan, they were to take charge on the twenty-first day of the month of May?

A. Yes, sir.

Q. Did they go the potteries that time?

A. Yes, sir.

Q. And practically assume charge of it?

A. Yes, sir; assume charge of it.

Q. What part of the business did Mr. Wood assume, Mr. Magowan, and what part Mr. Barlow?

A. Mr. Wood assumed charge of the mixing of the bodies and the glazing; mixing of the glazes and the materials to make the glazes on the ware.

Q. What else?

A. Although it was understood and agreed that Mr. Barlow was to do that and use the same bodies and mixings of glazes as he had used at the Mercer Pottery; that was one of the great incentives for securing their services.

Q. What else did Mr. Wood do?

A. He had charge of the firing of the kilns, and was to assume entire charge of the decorating department of the pottery.

Q. What part of the work did Mr. Barlow do?

A. Mr. Barlow assumed charge of the workmanship and the shops; the workmanship on the wares and the shops, as well as the modeling.

Q. Who had the hiring of men—hands?

A. Mr. Wood and Mr. Barlow at times.

Q. Mr. Wood mainly, did he not? And discharged the men, did he not?

A. Yes, sir.

Q. They commenced work manufacturing as soon as they got there?

A. Yes, sir.

Q. What was the first line of goods they started in to make for you?

A. They started in to make imperial china or a superior quality of thin porcelain.

Q. Was that the first imperial china?

A. Yes, sir.

Q. That was used for what purposes?

A. That was used for fine dinner ware services and tea ware.

Q. Was that different from any ware that you had been making at that time—if so, in what respect?

A. It was to be far superior to anything ever made, and guaranteed to be by Mr. Wood and Mr. Barlow.

Q. Did they show you any samples of what they would do in order to induce you to make that grade of goods?

A. Samples were submitted of a very fine quality.

Q. How long after they commenced did they first produce any of this imperial china?

A. Within three or four weeks at the latest.

Q. And what was the result of that china, Mr. Magowan, as a class of goods?

A. We found that the goods didn't come out as they represented or guaranteed to make them; our travelers—

Objected to by Mr. Aitkin.

By the Court—You had better inquire first what his knowledge of the wares are.

A. Did you of your own knowledge—could you say what the quality was?

A. Yes, sir; I am well acquainted with several receipts for manufacturing pottery, and have given a great deal of time and attention to it.

Q. I am speaking of this particular ware, of what the practical result is; are you acquainted with that?

A. I am thoroughly acquainted with it.

Q. You are thoroughly acquainted with that?

A. Yes, sir.

Q. Now, if you will, state what it was, what the result was.

A. The result of their management and work there in the production of imperial china?

Q. I am not speaking of that; what was the product of this imperial china by them—what kind of china did they produce?

A. Thin porcelain.

Q. What was the character of it—good, bad, indifferent, or what?

A. Very bad.

Q. And why?

A. It was not uniform in color; was defective in manufacture.

Q. In what way, sir?

A. By having fire cracks in it in large quantities, and ten times the usual amount of dirt, what is known as kiln dirt, on the ware, which destroys it for sale; also, the first that went out to the market was returned to us; it was very subject to crazage.

Q. What do you mean by crazage?

A. That is a term used by all potters, which applies to where the outer surface cracks and absorbs grease and dirt, which makes it an undesirable article for use.

Q. That was one defect, and the other defect was that of having dirt upon it; what would cause that?

A. That was caused by bad management in and about the kilns, and the lack attention in the placing of the saggers, and keeping the saggers in proper condition, so that when the ware was being fired the dirt would fall upon the ware and it became mixed with it; that would ruin it.

Q. What do you mean by saggers?

A. Saggers is an article made of a cheap clay body, similar to terra cotta, and which is simply a receptacle for the ware.

Q. (By the Court)—Circular form, open at one end, and will contain about how much?

A. They are different sizes; some contain a dozen plates; they can be made to contain two dozen plates; there are also saggers of the banjo shape; they make them any shape to conform to the shape of the article made.

Q. Was there any other defect? You speak of the crazing and the defect in burning, and that there was a loss in the manufacture. What do you mean by that?

A. I mean that in addition to producing bad ware to our great loss in money and reputation, the amount of thirds they brought out of the kilns was at least seventy-five per cent. more than was customary at other potteries or had been at that pottery.

Q. What do you mean by thirds?

A. Thirds is a class of ware that is either so bad in color, or so bad in quality, or has been cracked or chipped or broken so as to make it only worth about twenty-five cents on the dollar, thereby destroying not only all possible profit, but also making us assume a loss of at least twenty or thirty per cent.

Q. You say that that loss was three times—the amount of thirds three times the ordinary amount?

A. Yes, sir; and three times larger than at the present time under other management.

Q. There was no record kept of the drawing of kilns?

A. Yes, sir; as a precaution against any future argument that may come up, we have a record.

Q. (By the Court)—Won't you let him explain what he means by that record, what is shown by it?

A. The record was kept by a simple system, as follows: All the ware from the kilns would be placed on the floors; the good ware would be selected and put in one place after the firing, and the thirds and the bad ware would be put in another place; then the clerk from the office would go out and take a memorandum of each article, good and bad, that was taken from the kiln; then the value would be figured up in a book, and could be readily seen by anybody; Mr. Wood has seen it himself, as well as myself and Mr. Barlow.

Q. You say you have that record, and can produce it at any time?

A. Yes, sir; in addition to that loss, we discovered, upon investigation, that we were only having drawn from our kilns about sixty to seventy-five per cent. of their capacity; in other words, we had found that other potteries were drawing the same kind of ware, as to size and shapes, from a kiln the same as ours, in the neighborhood of nineteen hundred to twenty-one hundred dollars' worth of ware, while our managers were only drawing from fifteen to six-

teen hundred dollars' worth from a kiln; I would state the same kilns are producing from two thousand dollars to twenty-two hundred dollars now of ware that is sold for the same money; this was a loss to us, not only in placing those kilns, because the kilns were paid per kiln and not per day, but also a large loss to us for the amount of coal consumed, it not costing more to fire a half kiln than when full.

Q. Did you call the attention of these complainants to these things?

A. Yes, sir; it was called frequently by me, as well as by my other partner; and at last we saw they did not remedy it themselves, and I went to the East Trenton Pottery and conferred with Mr.—[Interrupted.]

Q. Never mind about that. The question was whether you called the attention of Mr. Wood and Mr. Barlow to it?

A. Yes, sir; and the record was shown to them.

Q. What did he say?

A. He made some excuse.

Q. Mr. Wood, now?

A. Yes, sir; either that it was that they didn't have the saggers right, or didn't have enough of them, or bad management upon the part of subordinates, but they said that it would be remedied; I stated that if it was for want of saggers, buy saggers, the concern is running at a loss on this principle; but it was promised to be remedied at once.

Q. Did it occur after you had spoken to him in relation to this particular china?

A. Yes, sir; many times after that.

Q. And you had occasion to call his attention to the fact?

A. Yes, sir.

Q. Where the goods are defectively fired, Mr. Magowan, what do you have to do with those goods in order to utilize them at all?

A. Goods that are fired so as to be partially soft, and not hard, have to be re-fired at double the expense—fuel, handling and the work and everything else.

Q. By referring to the defective firing, you mean they were fired soft?

A. Yes, sir.

Q. And did you have to re-fire them?

A. Yes, sir; large quantities, and many times.

Q. (By the Court)—Do I understand by that that when a thing is burned, that it proves to have been fired soft, and portions of the same goods must be re-burned again?

A. A good fireman would burn a kiln uniform altogether; keep the drafts the same and the heat the same, and then if he burns it right it will all be of the same degree of hardness; but in their case a kiln would be part of it burned right and the other would not have the degree of heat required, and the ware would be soft and porous, and would therefore be unfit for sale. The ware that was soft, as near as could be selected, was placed back in the kiln and re-fired again.

Q. Would that have to be re-glazed?

A. Regarding the firing which I am speaking of now, when it is in a gloss state, supposed to be ready for the market—we had large quantities of ware in the bisque state, that is, before the gloss is put upon it, that was fired too soft, and had to be re-fired at double the expense of coal, fuel, risk, breakage, and everything of the sort. In other cases we have large quantities of ware fired too hard, which made it absolutely worthless. It was so hard that it would not absorb or take the gloss. The ware cannot be sold unless it has a glaze upon it. We have large quantities in the pottery to-day. We have kept it as evidence, and it can be shown if necessary.

Q. Was there any evidence of this defective workmanship and burning on the part of these complainants?

A. My attention was called to it by workmen around there, as well as the book-keeper; upon investigation I found large quantities of bisque ware that had been secreted behind other stock; I called Mr. Wood's attention to it, as well as Mr. Kirkham's; they admitted the fact that they had manufactured some ware that was soft, and that they had made a mistake; it was evident to everybody, upon sounding it and testing it, that that was the case; I called their attention to the great loss we were sustaining by such bad management, and we had other guarantees the same as

before that it would not be continued; I also had my attention called by kilnmen to large quantities of bisque ware in the bisque kiln sheds that had never been taken out of the saggers, but had simply been covered over to be placed back in the kiln at the first opportunity; these damaged goods amounted to not one-tenth of a kiln, but in some cases a half of kiln, and Mr. Alpaugh and others saw the same thing.

By Mr. Gummere:

Q. What is the bisque ware that you speak of? do you mean the unglazed ware?

A. That is ware after the first firing in the green state.

Q. Before it is glazed?

A. Yes, sir; that was set aside because it was spoiled, unless re-fired, and to save a portion of the loss.

Q. How many firings are there in the process of the manufacturing of the ware?

A. Biscuit fire and gloss fire; two.

Q. In the first place the green clay is fired so as to obtain tensity, so that it is hard enough to stand up and not be easily affected, and yet porous enough to receive the glaze?

A. Yes, sir.

Q. And then you glaze it and re-fire it, and that's the complete process?

A. Yes, sir.

By Mr. Vroom:

Q. This ware you discovered had been defectively fired?

A. Yes, sir.

Q. Was that after they left that you discovered this?

A. That was during their administration.

Q. The attention of Mr. Wood was called to it?

A. Yes, sir; also that of Mr. Barlow.

Q. Now, that is one class of goods; to what extent was this, or how much of it?

A. No correct record was kept, but it would exceed $15,000 or $20,000 worth of ware.

The Court—If Mr. Magowan will state definitely how much was damaged by this alleged imperfect management, certainly it could go in, and it would devolve upon the other side to show that he was

wrong; they having the responsibility it would leave the knowledge of the condition with themselves. Such testimony, of course, is not as valuable as if it had been itemized. It may prove to be very much at random, but this witness has shown such knowledge of the case as to justify me in admitting it. I may observe that the extent of its value must depend upon what follows.

The Witness—I will explain how I would reach that estimate, if I am permitted to do so.

Mr. Aitkin—That would be proper, I should think.

The Witness—I saw in one week there three half kilns. A half kiln would figure up at least $800; that would make over $2,000. I saw that at least thirty times after that, and can call attention, by facts and memorandum of Mr. Mulford or my own, that there was at least $15,000 worth of that ware. It would far exceed that if I had kept a record of all.

Q. When did this begin, and how long did it continue?

A. It begun about three or four months after they came there, and continued until they left; but we endeavored to get rid of them shortly after they came there.

Q. It continued during that period?

A. Yes, sir.

Q. Now, you have been speaking of the manufacture of what you termed imperial china. Was there any other kind of ware that they undertook to manufacture specially? I think you said something about vitrified china?

A. They undertook to manufacture ware which they guaranteed to make—vitrified china.

Q. Was that the same article that you spoke about as the same article mentioned by Mr. Wood in the conversation which you have referred to, and of which he showed you samples at his house?

A. Yes, sir.

Q. Did he bring those samples to you at the time, or did he show them to you at the office?

A. I couldn't tell definitely whether he showed them at the office. A sample which Mr. Wood and Mr. Barlow submitted is also at the pottery to-day.

Q. Was that submitted after they entered upon their duties—this last sample?

A. It was submitted both before and after.

Q. What was the first that was done with reference to making this vitrified china, after the execution of the agreement?

A. They called our attention to the fact that large profits existed in the sale of a fine quality of vitrified imperial china for cafés and fine hotels; upon their guarantee and representation that they could produce it in large quantities, we agreed to make it.

Q. Why do you say large quantities?

A. I mean by large quantities, in as large quantities as we could sell, which would be in bulk.

Q. The production of it in large quantities would add to the value of it to the manufacturer?

A. Yes, sir; very much, because at the prices it could be sold at it would be at large profits.

Q. Did you act upon their representations as to the manner of making this china?

A. After several interviews, feeling that their representations were correct, that they had made those goods for years, and that it was no question of experiment, we went to large expense in getting new shapes and models to have new shapes of china modeled; we bought ware manufactured by European parties as well as American parties, and made extensive preparations preparatory to doing a large business in this vitrified imperial china; they got samples and submitted the samples to us; we could ask above rates for that class of goods on account of their extreme white color and beautiful appearance; upon test of the goods they showed that they were entirely vitrified, and would absorb nothing.

The Court:

Q. Do I understand that they made such ware as you are now speaking of?

A. Yes, sir; samples of it right in our pottery; the samples that they made were left in our office, and they went to work and made more, so that travelers could take those samples and show them to the trade throughout the United States and book orders; they started out doing it and booked orders in the trade; we got up new letter-heads, new cards, a large amount of circulars, and made a big advertisement of this fine quality of vitrified china at large expense; orders came in, but we never could fill any of them; they commenced the manufacture of it, but found they couldn't produce it; what they brought through was a loss to us of considerable in money, and the fact that we had made representations to the trade throughout the whole country of such a fine quality of vitrified china, why, it was a loss to us in reputation, not being able to fill the orders that came in; we couldn't fill a single order; no ware was produced that was fit to sell.

Q. What was the difficulty?

A. As explained by Mr. Wood when he admitted in our office, accompanying Mr. Barlow, that he couldn't do as he represented—found out that he couldn't, after attempting to make the goods in quantities—he said it would require new kinds of saggers; he couldn't keep the goods in shape in the kilns, and there was some difficulty about keeping the ware cool preparatory to the second firing; he told me that, not understanding that fully, he went to see the Greenwood Pottery people.

Q. Did they manufacture the same thing?

A. They manufactured a quality, but nothing compared in quality to these; because he didn't do what he claimed, couldn't do what he represented, the goods came out in bad shapes, ungainly shapes, not uniform in shape or color; in some cases, for instance, a sugar-bowl would be a thirty-second of an inch thick, and in another place one-eighth of an inch, right opposite, on the sides, where they should be the same size; those goods were not salable at any price; there are some of them at the pottery at the present time.

Q. Was that a defect in the manufacture—are you practical enough to state that?

A. Yes, sir; a defect in his mixings of the body; the

color not being uniform, it showed a positive defect in the glaze; some were a yellowish white and others were a bluish white; the entire outfit was an absolute loss.

Q. Did this ware require the construction of a special kiln—was it another class of ware?

A. It was another class of ware; this ware necessitated the manufacture and purchase of a special kind of saggers and also the appurtenances to place in the saggers.

Q. To what extent did you purchase these saggers, especially for the manufacture of this ware?

A. Well, together with what we manufactured ourselves and purchased, it would be at least $1,000.

Q. Of saggers just for this?

A. Yes, sir.

Q. You said you went to the expense of advertising, &c.; do you know what that expense was for the getting out of this ware?

A. A thousand dollars.

Q. And for the saggers a thousand dollars?

A. Yes, sir.

Q. Did you ever estimate the loss which you sustained by reason of the defective manufacturing of goods of this kind of vitrified china?

A. Yes, sir; and Mr. Alpaugh figured up $5,000, at least.

Q. Including the advertising and the saggers?

A. Yes, sir.

Q. Five thousand dollars just upon this experiment of manufacturing vitrified china?

A. Yes, sir; but they didn't represent it as an experiment. We didn't understand it was to be an experiment.

Q. Did you not find, after they had left, a large amount of this in the biscuit shape, Mr. Magowan, that had never been utilized at all?

A. Yes, sir; our new manager called our attention to large qnantities, which are there at the present time, which were secreted and had always been taken by them as first-class stock in the biscuit ware-room.

Q. When you took account of stock that had been accounted by them as available stock?

A. They took that as stock worth its real value, while it

is really worth nothing. Now, the loss is more than we thought it was, by reason of finding this bad ware.

Q. That was all made at the time they were manufacturing this vitrified china?

A. Yes, sir.

Q. You state that in taking account of stock, I so understood you, that they had included this as good ware?

A. Yes, sir; first-class ware.

Q. And it was only after they had left, that you discovered that, instead of being good ware, it was worthless and had been placed by them in the biscuit wareroom?

A. Yes, sir.

Q. Do you know the amount of that?

A. I haven't figured that up, but I can do it and bring it into court at another time.

Q. After the making of this class of ware—. You spoke of the manufacture of bone china; when was that undertaken?

A. Later on, upon Mr. Donoher connecting himself with us.

Q. What do you mean by the term bone china?

A. Bone china means a very fine quality of very thin china, entirely vitreous or transparent; it means the finest quality of china, the same as made in France.

Q. Did you have any conversation with Wood and Barlow?

A. Yes, sir; in connection with Mr. Donoher; they submitted samples of that, and claimed to be able to make it in large quantities and at a very large profit; we told them that if we could get list prices and they could do as they represented, make in it large quantities and like the sample submitted, it would be a profit to us of the discount we were allowing on the regular goods, which was forty per cent.; they told us to go ahead and sell them; we immediately commenced to book orders; Mr. Donoher took a large order from Young's Hotel, Boston, the largest importing house in the country; they commenced dealing with us right away, giving us orders for large dinner sets, with the understanding that cups and saucers were to be of this fine china; it was their only incentive to commence dealing

with us at all; we found we had taken orders on their guarantees of plenty of goods like the sample submitted; we couldn't fill the orders, except a very few at the start; this was done by us taking from a large quantity that they undertook to make of bone china—cups and saucers; we got from twenty to twenty-five per cent. of cups and saucers that we actually could work off; the other seventy-five per cent. were no good whatever; we had to discontinue the manufacture on account of the loss; we were obliged, in some instances, I believe, to buy some china to fill in the orders that we had sold; it was not only a loss to us in getting ready to manufacture those, but it was a loss of trade, those parties and firms leaving us that had commenced with us, and not buying the other goods.

Q. You say the first conversation you had with reference to Mr. Wood and Mr. Barlow, was in the presence of Mr. Donoher?

A. Yes, sir.

Q. What were the statements made by Mr. Wood and Mr. Barlow in reference to their ability to make this china?

A. Their statements were that they could manufacture it in large quantities and like the samples they submitted.

Q. Did they claim that they had made the samples?

A. They represented on the spot that they had produced the samples.

Q. Did they say that they had made it before coming with you?

A. Yes, sir; and Mr. Donoher immediately said that if they could manufacture goods like that, we could sell large quantities.

Q. Which one of them spoke about manufacturing it before?

A. Mr. Wood spoke of manufacturing it before and Mr. Barlow also said he had some goods down to his house that he had made three or four years before.

Q. Was this the kind of ware that you had made special kilns for?

A. No, sir; it was for another class of goods; that was a class of goods that were called under-glazed decorated imperial china.

Q. That was the class of goods that they claimed, as you have stated already, that they could make before entering into the contract?

A. Yes, sir; that was one of their specialties, from which we expected to become millionaires.

Q. Now, we will come to that class of goods, Mr. Magowan. Will you explain what you mean by this under-glazed decorated ware, so that the Court will understand it?

A. Under-glazed decorated ware is a class of china ware that has the decorations placed upon it in the biscuit state, or after the first firing from the green state; it is then dipped with a glaze and fired the second time; it is readily seen that the advantages of that ware are great—are many over the ordinary imperial china, for the reason that you get a decorated piece of china ware where the decorations cannot be worn, because they are beneath the surface, and the glaze being of a glassy nature it shows through there clearly; these decorations thus put on are proof against the destroying effects of acids; fruits, acids, tomatoes and other articles of food that contain acids would destroy the colors if they were on the outside.

Q. Did they submit samples of this?

A. No, sir; they submitted samples of ware of that class, and guaranteed to make it in such quantities as were never produced in the United States; it has not been produced here in the United States.

By Mr. Gummere:

Q. Is such ware produced abroad?

A. Yes, sir; and we were simply to compete against European markets.

Q. Before the agreement was entered into, these gentlemen represented that these were specialties of theirs that they could produce?

A. Yes, sir; they did.

Q. When did you first commence, Mr. Magowan, the manufacture of this class of ware?

A. We commenced to manufacture this class of ware in May, 1885.

Q. Had you ever made it before at the pottery, or was it an entirely new venture?

A. They had made it at the pottery before in samples.

Q. I mean now as a product of the manufactory?

A. No, sir; not as a product or a merchandise article.

Q. Did you start in to make it in quantities?

A. Yes, sir. Upon Mr. Wood's and Mr. Barlow's representations that they could produce goods in quantities like the samples, we decided to go into the manufacture of it largely, for we found out by inquiry at large boarding-houses throughout the country that they would buy it. It necessitated a large outlay of money preparatory to the manufacture of the goods. We made an outlay of at least three thousand dollars for copper-plate engravings.

By Mr. Vroom:

Q. For what purpose?

A. For printing paper with color; the color is transferred to the ware, making decorations upon the ware.

Q. Then the decoration upon this ware was done entirely by printing upon the bisque after the first firing?

A. Yes, sir.

Q. You went to the expense of having copper-plates engraved for that purpose, of at least three thousand dollars?

A. Three thousand dollars. We also went to the expense of the purchase of printing presses, and also of tanks and piping furnaces; also went to the expense of large quantities of new kinds of saggers. Mr. Wood spent some six or seven hundred dollars for some little pins—all worthless—can't be used for any other purpose. He finally built a new kiln, at a large expense; the kiln has been torn down since—it was worthless. That kiln, with the appurtenances, necessitated an outlay of $2,500; the kiln itself cost in the neighborhood of $1,200.

Q. That turned out to be absolutely useless?

A. Yes, sir; and has since been torn down, worthless for any purpose. This outlay was not only confined to the items enumerated, but we also employed, or they employed, men at extreme high prices, whom he claimed made a specialty or could teach to make a specialty of this class of goods. We fitted up rooms which were not needed for any other purpose at that time, and commenced to advertise, sent out circulars, hired stenographers, bought type-writers, and

commenced to correspond with every hotel in the country, not only in this country but in Canada, and the result is a matter of record, the ware proved worthless before it was used; came back to us in lots of two and three thousand dollars' worth at a time. The difficulty with the ware was, in the first place, the proportion of ware that could be shipped, from its appearance, was very small, and as compared with the amount we paid for in producing.

Q. What do you mean by the appearance of the ware?

A. I mean to say that a very small proportion of this under-glazed decorated ware came out in a clean, nice-looking condition; some of it would be blurred or the figuring would be indistinct, the result of too much firing or of colors that flowed, nothing like the samples submitted and upon which we based our outlay of money when we went into the business.

Q. What were those decorations generally?

A. One decoration, that cost us in the neighborhood of fifteen hundred dollars, was a landscape scene, together with floral effects and with birds, all gotten up on expensive copper plates, handsomely shaded—the Saratoga pattern; most every piece in the set had a different decoration or other set of copper plates.

Q. Do you mean to say that the outline of the landscape blurred, or the coloring of the birds was blurred?

A. Yes, sir; indistinct, dauby; also, they varied in color, so that you would take the plates that were brown, and soup tureens would be almost a black. The Elberon pattern was a border pattern that consisted of a great deal of fine hair shade work, and daisies having little fine lines, flourishing, all tending toward the center, where there was a shield, or what might be termed among ornamenters, a center-piece; that was printed in sable gray, and the sample submitted showed a color and finish and a style of ware that had never been placed upon the market before, and was very much admired; when we come to get the goods produced to fill orders, they also varied in color so that we couldn't match up; some would be blurred, no two alike.

Q. So that you couldn't have a complete set which were all of the same color?

A. Only by selecting over a very large quantity and assuming a great loss in selection.

Q. What would you do with those rejected?

A. We would sell them to junk men or people that would come along and buy a job lot at a nominal figure; perhaps $300 worth would be sold for $25; we didn't dare sell them to the trade; we would injure our reputation more than we could get out of the sale by an extra price; these underglazed decorated imperial goods we commenced to ship out; for instance, the Palmer House at Chicago was booked for about ten thousand dollars' worth of goods, to supersede Haviland's china, manufactured in France, because with these goods we competed against the finest French goods; $2,500 worth was shipped; immediately upon the receipt of the goods they wired us to come on there; our Mr. Donoher went and found the goods crazed.

Q. What was the result?

A. That the goods were worthless for use, and they shipped them back to us; we not only lost the expense of securing the contracts, but the freight expenses both ways; we lost the contract; we also lost trade with French, Potter & Wilson on their other goods.

Q. You lost the entire contract for the ten thousand dollars' worth of ware of this character of the Palmer House?

A. Yes, sir; Burling, Pear & Company, another large house, simply shut off all dealings with us entirely, simply on account of the exposure of bad ware shipped to the Palmer House; they haven't dealt with us to this day; wouldn't buy any goods.

Q. Where else did you send it—speaking of the underglazed china ware?

A. Contracts in the aggregate over ten thousand dollars with the Parker House, Boston, Young's Hotel; Abraham French & Co. were secured by submitting samples of the ware which the complainants agreed to make; we secured the contracts and made the goods; in one shipment of about five thousand dollars we were obliged to take back, and our Mr. Donoher prevailed upon them to put them in service under the protection of a guarantee from us that we would assume any loss; they came back, were re-fired and

shipped to them again; that was also the case with other goods sold through Abraham French & Co.; not only we lost the trade of those hotels, but we destroyed the confidence that Abraham French & Co. had in our goods; they thought so well of the samples we had submitted that they gave us the privilege to stamp on each piece "Abraham French & Co," the first time they ever permitted their name on American goods; it destroyed their confidence in us so much that we lost their other business—$50,000 a year, and would increase every year.

Q. Then you say this entire lot of goods that were shipped to Abraham French & Co. were a failure?

A. They were a failure so far as perfect goods were concerned, because they were returned to us and re-fired.

Q. That re-firing, you explained, was always attended with double expense?

A. Probably out of one hundred per cent. of goods put in the kiln, you only get eighty or ninety out perfect, even if they were perfect when they went in.

Q. Did these parties and firms cancel their other orders?

A. Yes, sir.

Q. These goods that you sent to Boston and were returned, were re-fired for what reason?

A. They were re-fired for the reason that they were what the importers and the hotel men call rotten goods, like chalk; you could break them with your fingers, and they would craze immediately.

Q. What effect would the re-firing have?

A. It would have a tendency to make harder and tougher at least a portion of the goods, and save us a portion of the loss.

Q. The re-firing would not cure any running of color?

A. No, sir.

Q. In sending the goods to Boston, I understand that you picked the goods?

A. Yes, sir; we selected the goods.

Q. And the return was made to you even after you selected the goods?

A. Yes, sir; and then we had to re-select them after they were re-fired, and throw out twenty-five per cent. at least.

Q. And it caused a loss of all the other orders you received from Abraham French & Co., of Boston?

A. They shipped back eight hundred dollars' worth in one shipment, and five hundred dollars in another, and other shipments which I can bring here if requested.

Q. You lost their entire trade?

A. Yes, sir.

Q. Now, in reference to both the Chicago and the Boston ware, Mr. Magowan, will you state definitely what the defects were in the goods? You remember these goods that were sent both to Boston and to Chicago, do you not?

A. Yes, sir.

Q. You stated what the defects were. Can you state what were the causes of these defects?

A. The cause of the defects was the wrong mixture of materials, both for the body and the glaze; also, bad management in firing.

Q. Those three combined—bad mixture of materials for the body, and the bad mixture of glazing, and the erroneous firing of the goods afterwards?

A. Yes, sir.

Q. Who did the mixing for these goods?

A. Mr. Wood did the mixing for the goods, after consulting with Mr. Barlow.

Q. Were they jointly interested in the making of this class of goods?

A. Yes, sir; I always made it a point to hold Mr. Barlow responsible at the same time that I held Mr. Wood, and I always talked to them that way; they both participated in the getting up of the goods.

Q. Well, in reference to the mixing of the glaze?

A. Mr. Wood did that.

Q. You have told us about the loss that you sustained in Chicago and in Boston; did you place any large quantity of this very same lot of goods at any other place?

A. Yes, sir.

Q. Where?

A. I presume we—well, I will state definitely—

Q. If you know the fact.

A. We sold some of the Elberon pattern underglazed

goods in every large city in the United States east of the Mississippi river, including St. Louis and Kansas City, and many of the towns; we also made a large deal with the Monongahela House, at Pittsburg; this hotel is admitted to be the most important in the country; it is an hotel where all the buyers of crockery ware in the country stop at in Pittsburgh when buying their glassware; it is the center of the glassware trade; we made a special effort there to keep out Haviland's French china goods and place our underglazed china goods in its stead, and succeeded; we were successful by submitting samples of the underglazed decorated goods that Wood and Barlow had guaranteed to make, and had made at our pottery; this pattern was the Elberon pattern.

Q. You submitted those samples with what result?

A. Some, also, of the Saratoga pattern; Mr. Donoher made this sale, and was assisted by Mr. Alpaugh personally at Pittsburgh; the goods were shipped.

Q. What amount of goods?

A. Between fifteen hundred dollars' worth and two thousand dollars' worth at the first sale were shipped there, and a dealer secured in the city to carry a small amount of stock to keep them supplied. Shortly after the goods went into service, we began to learn from dealers throughout the country that our underglazed—our decorated imperial goods at the Monongahela were crazed, and proving rotten. Our name was printed on the bottom of them, and, of course, identified the goods the moment a dealer would look at them. I might state, right here, that it is natural for a man in the crockery business to look at the grade and the wording the moment he sees it in a hotel, café, restaurant or elsewhere. If the ware had sold to advantage it would have been a big advertisement for us. It did not only make reports go around the country showing the failure of our goods at the Monongahela, but it stopped them buying throughout the country any goods of that class from us, and within two months and a half to three months, nine weeks after the goods were there, Mr. William French, of the firm of Abraham French & Co., whose name was printed on the goods, because he had the general agency for their sale throughout the country, came to our office one

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afternoon and he was very much agitated; he put upon our desk a large bundle, containing different pieces of our ware that he had taken from the Monongahela House; the ware was rotten, like chalk; when he put it down he said: "That settles the sale of your goods to our house," and they are probably the largest in the country; he said: "It don't mean the loss of that trade, but it means the loss of—"

Objected to.

Q. Simply state the loss of the trade?

A. It resulted in the loss of their trade—Abraham French & Co.'s trade.

Q. Whether the result of the manufacture and sale of this peculiar class of goods was not that you had received claims from parties who had bought throughout the country for damages?

A. I don't quite understand; please repeat.

Q. Was not the result that you received claims for loss or damages from parties who had bought this class of ware?

A. Yes, sir.

Q. That is shown by your books?

A. Yes, sir; the railroad shipping books show it; it is all itemized.

Q. The Monongahela House sale then turned out to be a loss, did it not?

A. Yes, sir; a great loss; they are using French china goods there.

Q. Did they return this ware?

A. Most all of it; all that hadn't been broken or destroyed.

Q. And made a claim for damages besides?

A. We compromised on it by shipping back other goods.

Q. Did you bring the complaints of this ware to the attention of Wood and Barlow?

A. Yes, sir.

Q. Did they come before the members of the firm in reference to it?

A. Yes, sir; their attention was first called to bad imperial china six months after they had been there; yes, sir.

Q. They then stated what, in reference to it?

A. When we first called their attention to it?

Q. I wanted to know whether you called their attention

to the bad manufacture of this under-glazed imperial china?

A. Yes, sir; frequently called it.

Q. Did you have them before the firm?

A. Yes, sir; Mr. Wood and Mr. Barlow both.

Q. What did they say in reference to it?

A. They at first claimed they had made some mistakes, but they would remedy them, and stake their reputation that they would produce them as they claimed, according to the samples, and that it would not be an experiment, but a staple article.

Q. Was that after the failure?

A. That was before as well as after.

Q. They stated that again?

A. Yes, sir; that they assured us.

Q. When the goods were returned from Boston and Chicago did you bring them before them? I am speaking now of the complaints that were made of these goods that were returned.

A. That was shown them, and they finally, after attempting to give good reasons, they admitted they couldn't produce the goods as they represented; they stated that in Mr. Alpaugh's office, in the presence of myself and himself; Mr. Donoher was present at the time; they acknowledged they couldn't do it; acknowledged that the goods couldn't be made according to the process of being printed on the biscuit, unless made on a cheap body like some English goods.

Q. They admitted that this process of manufacture was a mistake and failure?

A. Yes, sir.

Q. And that they couldn't manufacture these goods with the under-glazed printing or decoration?

A. Yes, sir; I asked him why he had made such representations to us and submitted samples and caused us to really—to expend large sums of money to make the goods, and virtually risk our whole investment; he then admitted that he thought he could make large quantities just like some samples that he made, and that it was really an experiment.

Q. He admitted that it had been an experiment?

A. That was the first I heard of an experiment; I was always particular to ask whether he was talking of an ex-

periment, or of something that had been manufactured for years; I never agreed, nor did my partner, to engage in the manufacture of any goods, unless they had been tried and proved satisfactory for years.

Q. Who had charge of the employment of the hands, Mr. Magowan?

A. Both Mr. Wood and Mr. Barlow, but mainly Mr. Wood.

Q. Who made up the pay-rolls or the list of wages for the men employed?

A. Mr. Wood some and Mr. Barlow some, and their subordinates would present them at the office.

Q. Was the entire control of the hiring and discharge of men under their control?

A. It was entirely under their control; we made it a part of our policy from the start to interfere in no way with their management; to give them absolute control of purchasing material and hiring all the hands.

Q. That was under the contract, wasn't it—that they were to have the hiring of all the hands?

A. Yes, sir.

Q. Have you any personal knowledge of the amount that was paid for services each week?

A. Yes, sir; I gave that special attention, to the finances and pay-rolls.

Q. You are therefore able to speak of the amounts you paid out during their administration?

A. Yes, sir.

Q. What would they average, the payments?

A. Their payments would average about three thousand dollars per week, or twelve thousand dollars per month for every output of sales of twenty-two thousand dollars.

Q. That is the way in which you estimate, is it not, the expenses of running the pottery?

A. That is the principle we have always gone on.

Q. Comparing it with the output?

A. Yes, sir; the labor being the principal item in the cost.

Q. Are you still doing that with reference to your management of the pottery?

A. Yes, sir; but the cost of labor is not anything like what it was; it is much smaller.

Q. How much would it average per month?

A. It averages now $28,000 per month—[Interrupted.]

Objected to. Objection overruled.

A. The amount will average now $28,000 worth of sales or output per month to every $12,000 per month paid in wages.

Q. Or an increase of $6,000 on the output for the same expenditures?

A. Yes, sir; for the same expenditures, where the same class is being sold at much lower prices now than when they were connected with us, and labor is exactly the same price now as when they were connected with us; potters' wages remain always the same.

Q. There has been no change in the pottery at all?

A. No, sir; not at all; simply the management.

Q. The same number of kilns and the shops in operation?

A. But a less number of men are doing the work for less money; greater care is exercised in handling, and more good goods are brought out, which swell up the sales also.

Q. Do you remember the men employed by Mr. Wood—any of them—during his management; did you know them?

A. Yes, sir; personally.

Q. Joseph Finney that was employed by him?

A. Yes, sir.

Q. What was he being paid?

A. He was being paid exorbitant wages for the work he was performing.

Q. What was he doing, or professing to do?

A. He was professing to be a selecter of decorated ware, but he proved a total failure, and was transferred to another department, simply looking hands.

Q. Was he put upon the pay-roll by them, and at what?

A. At $12 and $15 per week; the same labor was paid for to others around there at $6 and $7 per week; he was a relative of Mr. Wood's.

Q. Who had charge of firing the kilns?

A. Mr. Kirkham.

Q. What was being paid him?

A. $25 per week and five dollars extra every Sunday when he fired the kiln; the same work is performed at other potteries, and by good men, not bad men like Kirkham, for less money; I have informed myself so as to be able to swear to it as being a fact; I am employing men now to fire the kiln, and had been before the employment of Wood and Barlow; it was only an excess of money paid for no advantage; it is almost double the amount of money paid for the same services, and we were getting poorer services at that; I have since learned that Mr. Kirkham had been employed by Mr. Wood every place he was before that, and he was accompanied by him at that time, followed him around; Mr. Kirkham isn't making one-half the amount of wages now.

Q. This matter of the complaints in reference to the failure of these underglazed goods, and the return of them from the places as you have mentioned, was about when?

A. About a year and a half ago.

Q. 1885?

A. Yes, sir.

Q. 1884 or 1885? about a year and a half ago would be 1884.

A. No; it was in 1885 some time, or the latter part of 1884.

Q. That followed, I understand you, the failures on the part of these men in imperial china, and the vitrified and the bone china?

A. Yes, sir.

Q. And you presented the matter, as I understand it, to both Wood and Barlow, representing to them the complaints that had been made?

A. Yes, sir; called a meeting of the firm especially for that purpose.

Q. When did you conclude after that—when did you first notify them of your desire to discontinue their services?

A. I notified them virtually the first time six months after they had been there, that we would have to discontinue their services; but their explanation of a loss in busi-

ness and no profits, was owing to the fact that they had just taken hold of a large pottery, where everything was new to them, and they hadn't got the run of things, together with the fact that they had made some mistakes which would be remedied. Upon their reassuring us of their representations, as originally made, being carried out, and guaranteeing to do it, my partner and I finally consented to continue, and we went along again.

Q. That went on in that way up to what time?

A. Up to the next time we took an inventory to see what profits we made for the year, but during the year at intervals we would bring the question up of bad goods and bad management, but we couldn't get anybody else to take hold of the management, and we had to continue until arrangements could be made to secure other services.

Q. It takes some time after you get started upon the making of goods before you can determine whether they are a failure or not?

A. Especially in the crockery business it does.

Q. It will not be until they are placed upon the market?

A. Yes, sir.

Q. It is months after you have started the manufacture that you can determine whether they are good or not?

A. Yes, sir.

Q. You did notify them after the manufacture of this under-glazed imperial ware?

A. Yes, sir; notified them three times.

Q. When was the second time that you notified them?

A. The second time was at the end of eighteen months after their entering our service. Mr. Wood and Mr. Barlow, in company with myself, took all the values of stock and everything else in connection with the pottery, together; everything was taken by mutual consent, the prices fixed according to their consent, and the books always open to their inspection. We proceeded to find out what profit we made.

Mr. Gummere—That's shown by the books.

The Witness—That's shown by the books. The results the books will show. The pottery was shut down immediately and we decided to discontinue their services, and if

we couldn't get good managers we would keep shut down until three or six months, until we did get some one who would not lose money for us, and who could carry out their representations.

Objected to.

The Witness—This all took place in their presence, at the meeting. We gave them notice that we didn't want them any longer—that they hadn't carried out their agreement and had made false representations to us, and that we didn't want to be ruined in business. Mr. Wood said that he didn't think the estimate of profits was correct. I told him he had the privilege to show where they were wrong. He had the books all before him. I told him if he didn't understand the books he could secure the services of any expert, and prove to his satisfaction whether they were right or not. After satisfying himself, which he must have done, for he had all the privileges granted him by the agreement to investigate the books, we decided to discontinue his services and nothing was done by him for a week or ten days after we were shut down. One day he came to us and made a proposition to buy us out. I told him that if he could make us secure in the business which I had hoped to make money in, and we could get out of it as much as we put into it, we were willing to bear the loss and conclude to sell out to him. He said he would make us a proposition the next day. He made the following proposition the next day: He said he would take the plant just as it stood; the books just as they showed, thereby admitting that he believed the books were correct, and he would give us thirty-five or forty thousand dollars, or its equivalent in real estate, and a mortgage on the pottery to secure us for the personal property, such as stock, cash in bank, and assets of that character. I said to him, "Mr. Wood, we wouldn't be secure; you might not have all this stock here in a year from now—$100,000 worth of stock. You might not have all the cash here. Can't you get somebody to give bonds?" He said he couldn't do so. I said it looked very much like if he made a proposition that he knew we couldn't accept. Then he commenced to assure us that he was willing to stake everything he owned on his ability to continue the pottery. We tried

to arrive at some understanding with others—my partner and I—to make a change there. We were finally induced by his offer to buy out, with all that he had, and his guarantees again made for a third or fourth time, and also Mr. Barlow's assurances, and orders coming in that would be cancelled unless filled, we decided to continue; but we made up our minds that we would secure the best man we could and put him there as manager of our pottery, even if we were obliged to pay Barlow and Wood their salary.

Q. The third time was after the failure in the manufacture of this imperial china?

A. That was before Christmas.

Q. Prior to the March in which they were discharged, was it not?

A. Yes, sir.

Q. They were discharged by you in the month of March, 1886?

A. Yes, sir.

Q. And the pottery passed into the control of other management?

A. Yes, sir.

Q. And under which it is now being run?

A. Yes, sir.

Q. That's all.

Mr. Vroom—If your Honor please, we will desire to call Mr. Magowan's attention hereafter to the matter of the books, if it will be necessary to do so.

Cross-examination (by Mr. Aitkin):

Q. You first saw Mr. Barlow, of these two complainants, in relation to securing his services?

A. Yes, sir.

Q. How did you hear of him?

A. I heard of him as being the manager of Mercer Pottery, James Moses, proprietor.

Q. He had the reputation of being a good workman?

A. I didn't know whether he had that reputation or not.

Q. He had the reputation of being a good workman; did you know it?

A. I knew nothing about that.

Q. Did you make enquiry in regard to him?

A. I made enquiry in a general way, after he told me himself what he could do.

Q. In your first negotiations with him, did he not decline to enter your services?

A. Only owing to the fact that he had a contract with James Moses; that was the only reason he assigned.

Q. Didn't he inform you that he intended to remain with Mr. Moses, and couldn't go with you?

A. That wasn't his final decision; he said he would talk it over again and decide.

Q. How did you come in contact with Mr. Wood?

A. I met him; I saw him at his house?

Q. How did you hear of him?

A. Met him, and he courted an interview.

Q. How did you first hear that there was such a man as Mr. Wood?

A. I went to his house when he courted an interview, and agreed to go there when I met him on the street.

Q. You met him on the street first?

A. Yes, sir; he evidently had been talking to Mr. Barlow or Mr. Barlow to him with reference to it; then I met him at his house.

Q. When you first met him did you not tell him that Mr. Barlow wouldn't enter your services, and you wanted him to induce Mr. Barlow to enter your employment?

A. No; I never told him anything of the kind; no, sir; I went over the matter with him, and he told me that Mr. Barlow always advised with him, and he immediately began seeking an opportunity himself to engage his services with us.

Q. They were brothers-in-law?

A. I learned that they were brothers-in-law.

Q. Didn't you understand from Mr. Wood that Mr. Barlow wouldn't enter your service; and that you were anxious to secure Mr. Barlow since he had the reputation of being the best practical modeler in the United States?

A. I understood that he wouldn't enter our services unless in connection with him.

Q. Unless in connection with Mr. Wood?

A. Yes, sir.

The Court—Well, as to his being the best modeler in the United States?

A. I didn't learn that.

Q. (Further cross)—Did you make any enquiry as to the qualifications of Mr. Wood before you negotiated with him?

A. No enquiries that I can recall, except from Mr. Barlow.

Q. Except from Mr. Barlow?

A. Yes, sir.

Q. You knew that he was then a superintendent in a pottery?

A. Yes, sir.

Q. And had been for years?

A. Yes, sir; I didn't believe it to be good taste to ask the proprietor of a pottery where a man was coming to us and leaving him.

Q. Had you at that time actually bought out the Coxon interest in the old firm?

A. We had actually bought them out; in other words, we had consummated the deal.

Q. You had made an agreement?

A. I won't say that we made an agreement; we had consummated the deal, and it was absolutely necessary that we get somebody; we were out of practical managers.

Q. Mr. Alpaugh had been in partnership with the Coxons, and you bought out the Coxon interest?

A. I had been in partnership with the Coxons; I had the same interest there as Mr. Alpaugh, before we bought the Coxon interest.

Q. The agreement calls for the services for a period of time of three years and two months. Will you explain to us why that period was selected for their term of service?

A. It was selected for three years and two months, because of their representations to us and guarantees.

Q. I mean the time. The contract calls for a period of three years and two months. It is dated May 7th, 1883. Why was the time of three years and two months fixed? Do you recollect?

A. Nothing special, that I recollect.

Q. Didn't Mr. Wood object to entering into a contract with you for more than one year?

A. Not to my knowledge.

Q. You don't recollect, then, why the period was fixed as it is by the agreement?

A. No, sir.

Q. Hadn't you, by your agreement with Mr. Coxon, agreed to give paper which would not come due until the expiration of that period?

A. Not that I can recall now; Mr. Coxon was paid within a year; we owed the Coxons nothing after we bought them out—paid cash.

Q. In the conversation with Mr. Wood and Mr. Barlow, in regard to the matter of making the contract, did you not give them to understand that they should have full control of everything?

A. They were to have full control of the manufacture.

Q. Of the manufacture of the pottery?

A. Yes, sir.

Q. Didn't you give them to understand that you would guarantee to sell all the ware that they could produce?

A. No, sir; we made especial mention of the amount of sales for the year before, and they stated if we could continue such a large business as that, why the profits—the guarantee would not only be realized, but more; we increased the business the next year over the preceding year.

Q. Now, I will ask if you didn't guarantee to them, that, on the increased production, you would sell all they would manufacture for you?

A. No, sir; we did not; we may have guaranteed large quantities of goods, such as the samples they made and didn't produce.

Q. Wasn't that a part of the inducement, by which they finally entered your services, that they would have control, and that you would sell all the production that they would manufacture?

A. No, sir.

Q. Didn't it require urging on your part to induce Mr. Barlow and Mr. Wood to enter your service at all?

A. No urging at all.

Q. Wasn't the production of the pottery, after they took charge, increased—the production of the pottery after they took charge in 1883?

A. I don't understand you.

Q. The amount manufactured; the production of the business.

A. The net sales were not increased; the amount of ware manufactured—yes, in bad and good ware; not in good ware.

Q. More so than in any previous time during your connection with the pottery?

A. Irrespective of quality; in amount, in quantity, yes.

Q. During the time these men were there were you not continually interfering with them in the management of the pottery?

A. None whatever. Gave them *carte blanche* to buy what they wanted; full management.

Q. Didn't you prevent them from running the manufacturing department to its full capacity and limit their payroll?

A. Only when bad goods were made, and we had to stop their production to save ourselves from loss. We had to do that then for our own protection.

Q. Did you not, on one occasion at least, insist upon stopping all productions, against the judgment of your own partner and the judgment of Mr. Wood and Mr. Barlow?

A. Not against the judgment of my own partner.

Q. Or against the judgment of Wood and Barlow?

A. Not to my knowledge, except when we decided to make a change in the management.

Q. During the early part of the management of Wood and Barlow, where were you mostly employed, most of the time?

A. I devoted my time between the Trenton Rubber Works and the pottery; always being at the pottery every day as a rule.

Q. Didn't your partner, Mr. Alpaugh, have the virtual charge of your pottery?

A. No, sir.

Q. And you were looking after the rubber company?

A. I always took an active interest in the pottery business.

Q. Didn't Mr. Alpaugh object to your interference with the management of the pottery?

A. Not to my knowledge.

Q. You don't recollect that?

A. No, sir.

Q. And gave as a reason that you didn't know anything about the business?

A. The only time he objected to my policy in the pottery was when I wanted to continue, but he finally decided to continue with them when I wanted to.

Q. Didn't Mr. Wood frequently say to you that you were wasting money in running full expenses and only manufacturing half time?

A. No, sir; not to my knowledge.

Q. Didn't Mr. Wood make your decorating department a financial success?

A. No, sir; a complete failure; injured us more than anything else.

Q. Did the decorating department increase its production from the previous year largely—bad and good; did it increase its capacity?

A. In sales?

Q. I am speaking of the manufacturing—the production; were not the products of the decorating department increased?

A. Both good and bad, yes.

Q. Didn't Mr. Barlow model and design the most popular dinner shapes, with which you were greatly pleased?

A. He modeled and designed two dinner ware shapes; the first one, the Brunswick, proved a complete failure; the Windsor, which was designed according to our suggestions, and not the work of his own origin, has proved a success; Mr. Barlow's modeling was not a success.

Q. You first found fault with them, and gave them notice to leave in about six months after they started, and the second notice was at the end of eighteen months; that would be just before Christmas. Now, just before that time do you recollect their calling upon you to account to them for their profits of the first year; they called upon

you—Mr. Wood and Mr. Barlow—to pay to them their profits or their guaranteed profits for the first year?

A. I remember Mr. Wood calling upon me.

Q. What did he ask for?

A. He asked us for their share in the profits; to use his language, he said he had some investments to make or some obligations to meet, and he would like to get his share in the profits; I asked him what he referred to; he said his share in the profits of the business. "Why," I said, "we have not made any profits, and you know it. You haven't made us the money you represented and guaranteed to do." "Well," he said, "a note will do, a long note; you are not carrying out your agreement." I gave him every privilege to prove that I was not correct.

Q. Just confine yourself to that conversation.

A. I referred him to the books, but he didn't seem inclined to take any privilege or to look at the books or examine them; I went so far again as to tell him that he could get a man who understood books to examine them; he didn't do that; I don't know what his decision was, but I thought at the time that I convinced him that he was not entitled to any profits, because he went away, and that was the last of it.

Q. Did you direct your book-keeeper, then and there, to give him a credit of two thousand dollars on the books of your company?

A. No, sir.

Q. And direct your book-keeper to give him a statement to that effect?

A. No, sir; I took Mr. Wood to the book-keeper; I said he would be entitled to a profit of two thousand dollars, if we made profits; I said: "I won't give you a credit for two thousand dollars when we haven't made any profits; but I will give you a credit of two thousand dollars toward profits if we make them;" that is what we carried out; the books are entered just in that way; it shows exactly the result of the conversation and the understanding had with him on the spot, both in the day-book and journal and ledger.

Q. Did you have any conversation with Mr. Barlow?

A. The same thing with Mr. Barlow, although I will state that Mr. Wood generally acted as spokesman for Mr. Barlow.

Q. They were together?

A. I don't recollect.

Q. Do you recollect his coming to you at the end of the second year after this occurrence?

A. I don't remember his coming to me the second year; I remember his coming once more after that during their connection with us.

Q. Don't you recollect your telling your book-keeper to give him a statement or credit?

A. I told the book-keeper in the same manner as before; there was no profit made, there was a loss; if he wanted to know that, he was entitled to two thousand dollars when made, we would give him a credit toward profit; upon their making fifty thousand dollars for us, we guaranteed to give them two thousand; I told them at that time that they were not entitled to profits until they were made.

Q. Why did you want to enter such a thing as that on your books—that they were to have two thousand dollars, if profits were made?

A. Simply because they requested it.

Recess.

After recess.

Q. Did Mr. Wood ever ask you to release him from his agreement?

A. Not to my knowledge; no, sir.

Q. Do you recollect the time when John Taylor took charge of a pottery?

A. Yes, sir.

Q. Didn't he ask to have Mr. Wood take charge of that pottery for him and for you to release him?

A. Not to my knowledge; all I know about that is that Mr. Wood, when he at one time stated that Mr. Taylor wanted him, and asked, if he should make a deal with Mr. Taylor, if we would release; I told him certainly we would.

Q. Why didn't he go?

A. Because Mr. Taylor didn't want him.

Q. That's your idea?

A. I got that from Mr. Taylor himself.

Q. (The Court)—Did you ask him if Mr. Taylor would make a deal, or did he ask you, if he should make a deal with Mr. Taylor, whether you would release him?

A. Mr. Wood asked me.

Q. (Further cross)—When did you discharge Mr. Wood and Mr. Barlow finally?

A. We finally determined to not continue, under any circumstances, in the manufacture, on December last—about a year ago—in the early part of December.

Q. What did you do then?

A. We told them that we were going to curtail things so as to make as little ware as possible until we could get other service and put a new management there. We immediately took steps to make a change, even though we couldn't get the best men. That was in the commencement of December, 1885.

Q. You gave them notice that you would terminate their services with your company—that you didn't want them any longer?

A. Couldn't continue any longer without probably ruining ourselves.

Q. When did they leave you?

A. I think in March.

Q. How did they come to continue it from December to March?

A. We had nobody at all to manage our works, and had to depend on them until we could get somebody in their place.

Q. Do you mean to say that they continued in your service until March?

A. Yes, sir.

Q. You mean to say that?

A. Oh, yes.

Q. What was the occasion of giving them notice to leave in December, 1885?

A. We had sustained such large losses in our business, through their management and misrepresentations, that we had to do it to save ourselves probably from being ruined in business.

Q. And you had been discovering those things all the time while they were with you?

A. As soon as it is practicable in the pottery business.

Q. How soon did you discover it, practically?

A. Some things the first six months, and at intervals.

Q. What time in December did you give them notice that you did not want their services any longer?

A. I would state before the fifteenth; before the middle of December.

Q. You can't say how long before?

A. I am stating definitely before the fifteenth.

Q. How long before?

A. Between the tenth and fifteenth; it was just on the eve of closing the holiday business.

Q. Was that after the new arrangement, as to management, had been made between you and them?

A. It was after they had continued the last time—the third time.

Q. This was the third notice now that you are speaking of—that was the third notice in December?

A. That was the time that we decided definitely to continue them no longer.

Q. Wasn't that the third time?

A. If you will allow, I will tell you definitely. May I refer to the agreement?

Q. (Handing witness a paper). The agreement is in May, 1883?

A. That wasn't the third, because the third was simply a notice.

Q. When was the third?

A. The third was about eight months prior to that, I should judge.

Q. Eight months prior to December?

A. It was the last stock-taking time before that.

Q. When would that be, about May?

A. We only take stock in January or July. I can be very definite and positively correct about that date, if I am given opportunity to refer to my books.

Q. It was about the time of taking stock?

A. It was the time of taking stock and discovering the loss.

Q. You think that was in July, 1885?

A. I would not state definitely; either January, 1885, or July, 1885.

Q. (The Court)—The third time wasn't in December, as you stated before, Mr. Magowan.

A. We always take stock in the latter part of December.

Q. (Further cross)—The second time was at the end of eighteen months?

A. Yes.

Q. That would be in November, 1884. The third notice was either in January or July, 1885?

A. Yes.

Q. Now, then, the notice in December last was the fourth notice, then?

A. That was a notice to quit entirely—that we would dispense with their services. They were noticed—notified to quit, but we afterwards decided to continue.

Q. And they finally left in March. How did they come to leave in March?

A. As I stated before, we couldn't get anybody to take charge until then, and they seemed disposed to continue as long as we allowed them. They continued on until we—[Interrupted].

Q. What did you do?

A. We told them that we had other men to take their place to manage the pottery, and they could quit right away. They knew or anticipated that from the notice in December.

Q. Did they object to quitting?

A. They objected to quitting.

Q. Did they continue to come on there from day to day to the pottery and report themselves for work?

A. Only formally, but not practically; not on time to take hold of work. I told them they hadn't carried out their agreement, and we couldn't continue them.

Q. Didn't you, about that time, engage Mr. Barlow to continue on and take charge of the whole pottery instead of Mr. Wood; discharging Mr. Wood and keeping Mr. James Barlow?

A. We didn't engage him; no. We suggested to him and asked him to consider the taking hold of certain branches and continuing in connection with the new management, because we believed—

Q. Never mind what you believed; upon the same salary and terms?

A. No, sir; not the same salary and terms any more.

Q. Did you tell Mr. Barlow that the only reason you had for making a change in the management then was that you thought that Mr. Wood and Mr. Barlow didn't work harmoniously together?

A. No; I might have stated the fact that I noticed at times they didn't.

Q. Did you state that?

A. I might have said it.

Q. Did Mr. Barlow tell you that that wasn't true; that they did work harmoniously together?

A. I don't think he would state that, because I have seen them at times when they did not.

Q. Didn't they deny that to you?

A. Not to my knowledge; they didn't make an issue of it, and I don't remember any denial.

Q. Did you at any time say to Mr. Wood that Mr. Barlow had the best reputation as a modeler in America, and to keep him at that branch of the business?

A. No, sir.

Q. Anything like it?

A. I didn't say anything like that.

Q. When you discharged them in March did you put up notices in the pottery that the workmen were not to notice Mr. Wood or Mr. Barlow?

A. I won't state definitely whether that was so or not; I don't think in such terms as that; we might have put up a notice that Mr. Young or the new management had taken charge, and to please carry out their orders; that may have been put up.

Q. Don't you think there was something like that?

A. They were either notified in writing or verbally.

Q. Did you tell Messrs. Wood and Barlow in March, then,

that they need not come there, as they should have their pay the same as if they done their work?

A. I didn't agree to do that at first, but rather than continue with such great loss, we said we would prefer to pay them their salaries and be without their services, and that we did do.

Q. You promised them you would do so?

A. Yes, sir.

Q. And continued to do so?

A. Yes, sir; except some debts that were owing us, which we deducted.

Q. Up to what time?

A. They are all paid up; they are really in our debt now.

Q. To the termination—to the time that would have terminated by the terms of the agreement in July—you paid them up their salary up to July last?

A. Up to somewhere about that date, as we thought they were entitled to due notice. It is customary in the pottery business to give sometimes two and three months' notice, and to give three and four months' notice to managers; we thought they ought to have had due notice.

Q. Didn't you calculate their pay up to the time this agreement terminated in July last?

A. The time up to which they were paid was about the expiration of the agreement.

Q. (The Court)—Not on what basis you made the payment, but the exact period of time to which you paid them?

A. I would want to refer to the books before answering that definitely.

Q. (Further cross)—Did you tell them to call there weekly and they would get their pay weekly the same as before, after they left in March?

A. We told them we would either send it to them or they could call and get it.

Q. Were their names put upon the pay-roll the same as before?

A. No, sir; they were paid, but their services were really stopped; that was charged to expense.

Q. (The Court)—They were put in the expense account and not in the pay-roll account?

A. Yes, sir; because we were getting no services for the money.

Q. (Further cross)—After July, 1886, did you have appointments with Messrs. Wood and Barlow to settle the matters between you?

A. They waited upon me and wished to talk the matter over; I think it was mostly upon the length of time that we were to pay them their salaries. I told them distinctly that we would pay nothing—we hadn't made any profits and we wouldn't pay them. I told them we wouldn't pay them any profits because we hadn't made any, and they had an opportunity to see it themselves.

Q. That was after July—after the termination of the agreement?

A. I wouldn't state whether that was before or after.

Q. Don't you remember that after their term expired they were at your house or at the Rubber Works?

A. At the Rubber Works, but I think that was before July.

Q. You spoke of a man by the name of Kirkham being employed by Mr. Wood. Weren't you present when Mr. Kirkham was employed?

A. I wasn't present when the deal was made; Mr. Wood did that himself; either Mr. Wood or Mr. Barlow.

Q. Wasn't there a contract signed?

A. After Mr. Wood and Mr. Barlow said it was necessary to secure his services.

Q. And an agreement was drawn and put in writing?

A. They came to us and said they couldn't get him unless they entered into a contract with him; we, of course, gave them an opportunity to secure his services; we knew nothing about Mr. Kirkham.

Q. Wasn't that made with Mr. Kirkham after you had failed to secure a Mr. Wildblood from the other pottery?

A. I heard them say that; I didn't know Mr. Wildblood; it was an important position which they said they must have filled by a very competent, experienced man; they employed him, or, in other words, knew him and knew his record, and made the deal with him; but they couldn't get his services unless they were willing to sign a contract or agree-

ment which they had prepared, and they brought that to us; and we didn't know Mr. Kirkham when we signed that contract; we felt that if we didn't help them to get that contract, it would be a reason for the producing of bad work.

Q. Didn't he work at your place some weeks before the contract was signed?

A. I wouldn't state definitely; it couldn't have been long, if he did, because he followed Mr. Wood shortly after.

Q. That's all.

Re-direct:

Q. You have stated, on your cross-examination, that the pattern called the Windsor pattern was not entirely designed by Mr. Barlow. Is that so?

A. That is true; he was not the originator of that design.

Q. I want to know how it originated?

A. Both the Brunswick and Belvidere sets of ware, which Mr. Barlow had modeled, proved failures, and they were all he ever designed until that time; I found, by examining the sales, that nobody bought them scarcely the second time; other potters were getting ahead with their trade; I sent for Mr. Barlow, myself, to come to the office one afternoon; Mr. Donoher and Mr. Alpaugh were there; I told him we must get up a new dinner set; I told him to make a square brick of clay—an absolutely square dinner service; the demand seemed to tend that way; we would afterwards tell him how to ornament it; Mr. Alpaugh and Mr. Donoher and myself many times went there and told him what we wanted put on it, and decided as to the shape; he simply executed the work we laid out for him; that was the most popular service that was made, and met with great favor among the trade.

Q. You have spoken here of thirds coming from the kiln?

A. Yes, sir.

Q. What are the difference between firsts, seconds and thirds?

A. Seconds is a class of ware that may be a little crooked in shape, too much so to sell as first-class goods, and upon which we can realize a trifle better price than on the others,

and will sell at a loss below the price of first-class goods of fifteen to twenty per cent. They represent a loss of fifteen to twenty per cent. below the price of first goods, or regular good goods.

By Mr. Gummere:

Q. Do your records show the different qualities of firsts, seconds and thirds that each kiln produced?

A. Yes, sir.

Q. Have you the records of the kiln-drawings since the termination of your employment of the complainants?

A. Yes, sir; we have records of every kiln-drawing.

Q. Have you the original records or copies of them?

A. The original records.

Q. And also a record of them in your books?

A. Yes, sir.

Q. Will you produce the book to-morrow?

A. Yes, sir.

Q. Have you also a record of the roll of the employés, the time, the number, and the wages during the time of employment of these complainants?

A. Yes, sir.

Q. And a like record of the number of employés since that time?

A. Yes, sir.

Q. Will you produce both?

A. Yes, sir.

Re-cross.

Q. You have spoken this morning of a pay-roll being less, and the produce correspondingly greater; did I understand you right, it was for one month that you spoke of it?

A. Yes, sir.

Q. Can you recollect what month that was?

A. I am taking the whole year.

Q. Do you refer to any one month?

A. Take any month, on an average, during the year.

Q. You didn't speak, according to the book, on any one month.

A. I speak according to the books. Take the month of November or the month of October.

Q. Are you certain that either one of those months would correspond with what you have stated?

A. Yes, sir.

Q. The products and the pay-roll?

A. Yes, sir.

Q. This last October or November?

A. They vary some months; but that is the best way we can have of estimating our loss or our gain.

Q. You speak of losing the trade of Abraham French & Co.; were not you selling them last March, when Wood and Barlow left?

A. We were replacing goods that had been worn and had turned bad.

Q. That is the amount of goods you were selling them?

A. There was no business being done with them, except they were obliged to buy little matching, and couldn't get them from any one else.

Q. In November last, did you have notice, of which this is a copy, served upon each of these complainants? [Handing witness a paper]—Look at the signature at the end of that.

A. [Witness did so.]

Q. Is that the signature of your firm?

A. That looks like their signature.

Q. It came from your office?

A. It looks so; it looks as if it emanated from our office.

Q. And a copy was served upon Messrs. Wood and Barlow?

Mr. Aitkin—I will have this notice marked for identification.

Said notice was then marked *Exhibit W 2* for identification.

Mr. Gummere—You may offer it now if you wish.

Mr. Aitkin—Well, I have no right to offer it now; but I can have it marked for identification.

Mr. Vroom—Of course you can put it in now; let it go in; it does not make any difference as far as we are concerned.

Mr. Aitkin offered said notice in evidence, and the said exhibit was marked *W 2*, for complainants.

The Witness—Can I correct myself?

The Court—Certainly.

The Witness—I stated that the third time we notified them was either July or January, 1885, I think; it was in December, 1885.

Q. That is what you said first; that was the way we understood you first; instead of being four times, they were only three times, then?

A. Yes; three times.

EMPIRE POTTERY,
P. O. Box, 235
ALPAUGH, MAGOWAN & CO., PROPRIETORS.
TRENTON, N. J., U. S. A., November 5th.

WILLIAM WOOD, ESQ.:

Dear Sir—Referring to the understanding had with you in the presence of both members of our firm (Mr. Alpaugh and Mr. Magowan), it is agreed that the management and the result of your management of our pottery, from this time forward, shall be as follows:

First—The percentage of the cost and distribution of our goods must not exceed thirty-two per cent. (32%) on the net sales.

Second—The proportion of apprentices in and about the shops and about the kilns must be at least two apprentices to every one journeyman, and not any greater number of journeyman, as compared with apprentices, than is now employed at some other potteries.

Third—The good workmanship of the ware is to be maintained by a thorough system of inspection while in the green state, and before it is counted or placed in the green rooms.

Fourth—All ware that is defective in workmanship, or improperly made, or any ware that may have kiln dirt, or other defects accruing from faulty kilnwork or handling, must be paid for, and the loss assumed by the workman who is to blame.

Fifth—The "score dozen" system of placing and drawing all kilns is to be commenced at once, and upon as low a basis of cost to us as to others who are now using this system.

Sixth—All ware damaged, chipped, broken or in any other way injured about the kilns, either in the biscuit or glost state, and all manufactured ware damaged, broken or injured in any way must be set aside, and the value thereof to be appraised by a man we may assign for that purpose.

Seventh—A thorough and rigid system of selection is to be adopted and enforced at once, and nothing but what is strictly "thirds" are to be set aside under that class, and all "seconds" or "thirds" that can be utilized in any patterns adapted to cover their slight defects must be done.

Eighth—No "saggers" are to be purchased, but all are to be produced here at the pottery that we use.

Ninth—The quantity of ware contained in each biscuit or glost kiln as it is drawn, is to be carefully kept, and the value of it to be figured out and reported in writing to the office as soon as the drawing is completed.

Tenth—Mr. Mulford, or anyone we might appoint, is to assist in carrying out this system as well as to assist in carrying out the system of counting the ware, after the inspectors have completed their work. He is also to keep a perfect record of all damaged ware, "saggers," etc., about the pottery at all times, and report to us any deviation from this understanding that may occur.

Eleventh—Any instructions that we may suggest to bring about this, or any better results, are to be carried out by you if they are practicable in other potteries, and are for the best interests of the firm.

Twelfth—It is understood that Mr. James Barlow is to assume the management and responsibility of the clay-shops, oversee the drawing of all kilns, the making of the "saggers," the biscuit ware-rooms, the dipping of all the wares, and anything else pertaining to the above departments.

Thirteenth—And William Wood is to assume the management and responsibility of the mixing and of the bodies and glazes and "saggers," etc.; oversee the firing of all the kilns, the ware-rooms and the decorating department of our pottery, and everything else directly pertaining to the above mentioned departments.

Fourteenth—It is further understood that yourself and Mr. James Barlow are to coöperate, in conjunction with the positions assigned by each, for the management of our pottery, and to bring about the results named above. Signed,

ALPAUGH & MAGOWAN.

Q. You served that notice yourself, Mr. Magowan?

A. Yes, sir; I think I did.

Q. Didn't Mr. Wood tell you that he wouldn't remain in your service longer than the agreement called for between you and them?

A. Not to my knowledge; it was served before the third notice.

Q. Or at an interview the day before the notice was served, that he would not remain in your service any longer?

A. He never gave us that opportunity; not to my knowledge.

Q. Did you want him to sign—did you want them to sign another agreement between you and them, in regard to their services?

A. Not to my knowledge; I don't remember.

Q. You don't remember?

A. No, sir; except you might call that an agreement?

Q. You asked them to sign an agreement, and they refused?

A. No, sir; not to my knowledge.

Q. That's all.

Thomas P. Donoher, a witness produced on the part of the aforesaid defendants, being duly sworn, deposeth and saith: Direct examination (by Mr. Vroom):

Q. You reside in the city of Trenton, Mr. Donoher?

A. Yes, sir.

Q. How long have you lived here?

A. I was born here.

Q. You have lived here always?

A. Yes, sir; I was born here, and always made it my home, except five or six years when I was located in New York, and then I came to Trenton once and twice a week.

Q. You are connected with Alpaugh, Magowan & Co.?

A. Yes sir.

Q. You are the company mentioned?

A. Yes, sir.

Q. When did you connect yourself with that firm?

A. In May, 1885.

Q. In May, 1885?

A. Yes sir.

Q. Prior to that had you been connected with them in any way?

A. Yes, sir; as a commission agent in charge of their sales in New York and Boston.

Q. For how long a period?

A. Before and five years.

Q. You have handled them—all their products?

A. Yes, sir; sold everything they offered for sale on the market.

Q. In New York and Boston, during that period?

A. Yes, sir.

Q. You say that you were engaged in the commission business in New York; was that simply the crockery business?

A. No, sir; I represented glass and crockery.

Q. How long an experience have you had in the sale of crockery?

A. I have been connected directly for about twenty years.

Q. Twenty years?

A. Yes, sir.

Q. Handling the American manufacture?

A. Exclusively.

Q. So that you are well acquainted with the different makes?

A. I consider that I know as much about it as anyone in the country.

Q. You have had experience in handling all grades of ware?

A. All grades that have ever been introduced in this country.

Q. Did you have any knowledge of the manufacture of pottery?

A. Not as far as the mixing of the body and glaze, but I have been connected with the pottery so long that I know the causes—I know what causes the different imperfections of ware, from hearing the manufacturers speak of it.

Q. The twenty years that you speak of, you have been engaged in the crockery business was—the twenty years immediately preceding your connection with the firm of Alpaugh & Magowan?

A. No, sir; up to the present time.

Q. Then it is altogether twenty years up to the present time?

A. Altogether about twenty years; a little over.

Q. Including the time since your connection with the firm, which was in May, 1885?

A. Yes, sir.

Q. You say that it was the commission business that you were engaged in in New York?

A. Yes, sir.

Q. Is that done by consignments made to you?

A. Selling directly from the factory as their agent.

Q. You acquired a knowledge then of the goods that you sold, did you not?

A. I already knew all about them before I went in the commission business, having spent eight or ten years in the pottery; directly located in the pottery.

Q. Did you do a large and extensive business?

A. A very large business.

Q. And had experience in all the branches of that business?

A. Thoroughly.

Q. Including the matters of loss, adjustments and return of goods? You understood all that?

A. All that came before my notice.

Q. At the time you became connected with this firm, who had charge of the manufacturing department?

A. Jonathan and Charlie Coxon.

Q. When you joined the firm, who were in charge of the manufacturing department?

A. William Wood and James Barlow.

Q. Do you remember ever to have seen or have handled the vitrified china, produced while they were in charge of the pottery?

A. I have never seen any china produced that was sold, excepting some little bone china; the imperial china, the vitrified hotel china, was never produced in the market; I never saw any of it sold, placed in the market; I was called there for my opinion on it.

Q. At about what time, sir, do you remember?

A. I think it was in 1884; the latter part of 1884.

Q. Who did you see?

A. Mr. Wood, Mr. Alpaugh and Mr. Magowan; I saw them at the office of the Empire Pottery.

Q. Did Mr. Wood make any representations as to this china?

A. He said that he could make it beyond any question of a doubt.

Q. Anything further?

A. Equal to the sample which he produced, that was there.

Q. Did he have more than one sample?

A. I think there were a few pieces around there; two or three pieces, probably.

Q. Of his own make?

A. That he claimed to be, and a sample from the Greenwood Pottery, which he compared it with.

Q. What did he state about that?

A. Found it a closer body than the Greenwood, and a more desirable article from the appearance.

Q. (By the Court)—His was more desirable than the Greenwood?

A. Yes, sir.

Q. (Further direct)—What did he say in reference to his ability to make that vitrified china?

A. He said there wasn't any question about it, and he could bring it through; and I told him I didn't doubt his veracity at all; if he said he could bring those goods through in quantities, in marketable condition, I have nothing further to say; but that he couldn't convince me that he could bring those goods through until I had seen them in the warehouse, and that they were thoroughly vitrified and such goods as the hotel supply people wanted; it is a very easy matter for a manufacturer to bring through a few pieces; some potters, without any ability whatever, can mix a small quantity and bring it through, but when you are required to bring through a quantity of ware, it requires skill to do it.

Q. He said this could be brought through in quantities?

A. Yes, sir.

Q. What determination was arrived at at that time?

A. Well, he had so thoroughly convinced Mr. Magowan that they decided to go ahead with it; that was my understanding of the affair; not being an interested party in the pottery, I didn't take particular notice; I was outside then, a commission agent.

Q. Was any of it ever furnished to you for sale?

A. No, sir.

Q. Did you ever see any of it?

A. Excepting in the green state; I saw a large quantity of it made up in the green wareroom, where they are put to dry; I saw a large quantity of plates.

Q. When?

A. Shortly after that meeting.

Q. What became of those plates?

A. I don't know.

Q. They were never, to your knowledge, put upon the market?

A. Never to my knowledge put upon the market.

Q. That was all the recollection or knowledge you have of that matter?

A. That is all the knowledge I have of that, excepting that I know they got up special price lists and circulars; and I know that I have seen orders sent in from salesmen on the road for these goods, and I have neven heard tell of any being shipped out.

Q. Now, do you remember anything in relation to the manufacture, to what you term bone china?

The Court—Has he stated when this interview, with respect to this vitrified china, took place?

The Witness—I think it was the latter part of 1884.

(Question read.)

A. Yes, sir; what caused me to be interested in that particular branch of the business was that I sold large quantities of the decorated goods in Boston, and they wanted china cups and saucers; I asked Mr. Wood if he could make them, and he said yes; I furnished him with shapes; I asked him about the prices we could afford to sell them at, if we would sell them at list prices or forty per cent. more than we asked for our imperial chin, they could make a profit out of them; I booked an order, I don't remember the exact amount, but from four hundred to six hundred saucers; it was the intention to go ahead and make them for dinner sets; put in china cups and saucers with porcelain dinner sets, what we term stone porcelain; Abraham French & Co. were prepared to take them, and I agreed to furnish those cups and saucers in addition to furnishing their order for the hotel, which it took a very long time to do, then we were unable to complete it, and I know that the loss in producing what we did produce must have been very heavy; a large part of that was crooked and the goods were warped; I feel thoroughly satisfied that the loss in bringing through what we did of bone china was very heavy.

Q. It was a failure then, entirely—this product?

A. Yes, sir.

Q. Did you ever handle any that was brought through?

A. Yes, sir.

Q. The bone china?

A. Yes, sir.

Q. Did you have any of it?

A. They shipped several hundred dozen to Boston that we had selected out of what they brought through, in order to get perfect ware, or as near perfect ware as we could.

Q. What was the reason you selected, I want to know?

A. In sending out cups and saucers and plates of that kind, we have them selected with great care, because they want them very smooth; we had to select those over to find the best that was in the lot.

Q. How long did you continue the making of the bone china after that?

A. Well, I don't remember how long we did continue it; I know that Mr. Alpaugh and Mr. Magowan both got sick of their experiment with bone china.

Q. It turned out to be an experiment?

A. Entirely so; I never attempted, after I found out that they couldn't supply this house in Boston—I didn't attempt to sell it elsewhere, I didn't want to get into any more hot water than I had.

Q. Did you have anything to do with the sale of what was termed here the ordinary imperial china?

A. That is what is known as a porous body; an imitation of French china, in color only.

Q. That was the result of this management in the production of that class of ware?

A. Well, the hotel goods that were first manufactured—in several places they were returned to us, and we didn't sell them any more goods at all; and in the city of Boston they put some of our thin goods in a café; they crazed so easily that it cost us considerable trouble; that was the imperial china.

Q. What were the effects of it?

A. They varied in color, they were not uniformly fired; consequently there was considerable crazage, especially in the Brunswick shape; the bad effect was very serious.

Q. What would cause the defect in color?

A. I attribute that for not using one class of material at a time.

Q. (By the Court)—Are you expert enough to speak as to that?

A. I think I am.

Q. (Further direct)—Did you hear these particular people say that?

A. These managers—no, sir; I don't know anything about the mixture.

Q. You can tell what is the cause of crazing, can you not, from your experience?

A. Yes, sir; goods that are short-fired in the bisque state will craze, they absorb too much glaze; that was the difficulty with these goods; the same thing will apply to goods that are hard-fired in the biscuit state; they got to be fired with a certain heat to come out good.

Q. I want to know from you, if you can tell, what would cause the difference in color; some goods were of a bluish and other a yellowish tinge?

A. Some of the goods, being fired too hard, will cause it to be blue; that will affect it; too much cobalt would make them bluer.

Q. Cobalt put in the glaze?

A. In the body.

Q. I want to ask you about the manufacture of the—I now come to the matter of the under-glazed decorated goods—when were they first taken to the manufacturer?

A. Well, let's see; I think the first under-glazed goods were made in 1884, I won't be positive; and the first under-glazed goods—decorated goods—that Mr. Wood and Mr. Barlow turned out, were done on the glaze. The printing was put on the glaze and then put back in the kiln and fired into the glaze; that made the goods fairly durable, but the colors varied so much in tint that in dinner sets it was very difficult to select out a set uniform in color. I put into Young's Hotel, at Boston, several hundred dozen of goods which were done on the glaze, and they were satisfied with the quality of the goods; they wore and gave satisfaction; then they placed an order, I think it was $5,000 or $6,000

worth of goods. The Parker House placed an order; the two orders amounted to about $10,000. Mr. Wood then decided to do them on the biscuit before they were glazed, which was the only true principle of making under-glazed ware.

Q. Who was present when he stated that?

A. I have heard him speak of it frequently in the presence of Mr. Alpaugh and Mr. Magowan; he claimed that was the only principle to make under-glazed decorated goods, and submitted samples that were done that way, which were very beautiful, and he was thoroughly satisfied and convinced that those goods were all right, and I have frequently heard him say that he would stake his reputation on the durability of those goods.

Q. Who stated that?

A. Mr. Wood; I pitched into selling under-glazed goods, and succeeded in placing them in a number of our prominent hotels throughout the country. The first was placed in Young's Hotel, at Boston; the Parker House gave the second order; the third was placed at the Union Club, of Cleveland; the fourth order came from the Monongahela House, at Pittsburgh; and the Merchants' Hotel, of St. Paul, bought at the factory, from Mr. Alpaugh, the same line of goods that I placed in the Parker House, in Boston; then I introduced the goods—a full outfit—at the West Hotel, in Minneapolis; I sold the Palmer House, of Chicago, also; we meant business in introducing these goods.

Q. To what extent did you take orders in Boston for this particular class of goods?

A. $10,000 worth, and I supposed that there was—I won't be positive, but I should say that the dinner sets, all ordered about that time, before they got on to the fact that the goods were not durable, they probably placed $20,000 worth of our goods; Abraham French & Co., a very large firm, took hold of them.

Q. Did you go to Boston and see these goods, after they were sent there?

A. Yes, sir; I went there, and the proprietors of the Parker House said the goods were the worst they had ever had in service; they would break and chip up, and they

showed me large quantities of them crazed, which they returned to the factory, which Mr. Wood saw, and Mr. Barlow too, I presume; I remember one invoice of $800 worth of goods; we replaced very nearly all the goods we sent to the Parker House, or they were returned and re-fired, so that our loss there was very heavy; besides loss of sales to Abraham French & Co. on other goods; they only bought goods from us to match up.

Q. Then you say the real trouble with these goods was what?

A. The real trouble with the under-glaze goods were, that they were short fired; fired like majolica goods; when you broke them they were soft, crumbled off, very chalky; and Mr. French bought a lot of goods from the Monongahela House, that were almost black; Mr. Wood, I believe, saw those himself, he brought an arm full. We replaced, several times, quite a large quantity of goods at the Monongahela House. The colors were quite a serious matter; they varied so that Mr. Wood had a small kiln built, about one-fifth the size of regular kilns I believe, and put all the under-glazed goods in that kiln, so as to preserve the beauties of the colors; in preserving the beauties of some of the colors he sacrificed the durability of the goods. The colors run so, so much so that we had thousands of dollars' worth of two and three patterns that we were unable to ship out, and which we had to sell for a very small amount of money; I am led to believe it was a small amount of money. We never could find anybody who wanted to buy them; they were closed out as a job lot.

Q. The blue colors, what have you to say about those?

A. The matt blue is what I had reference to when I spoke about building this kiln, that was one of the goods that would not stand the regular fire. In order to be that color it required a smaller kiln; in our large kilns it fades and spits out, and it is impossible to bring it through, consequently you want to have it at a low heat; they want the heat just hard enough to preserve the beauties of the colors; but they sacrificed the durability of the goods to preserve the beauties of the colors, that is the matt blue.

Q. You say it affected the durability?

A. Yes, sir.

Q. How?

A. I thought I had stated by making the goods soft like chalk, so they would break up.

Q. Rotten is the term that you apply to it, is it?

A. Yes, sir; that is the proper term for goods that are not properly fired or soft.

Q. Will they break upon being used upon tables, or put in a range or anything of that kind?

A. Yes, sir; goods that we term short-fired goods; if you take them up and sound them, it has a dead, leaden sound; but goods that are properly fired will ring; especially after you put them in service for a few weeks, they are dead; there is no sound to them; I think the word rotten covers the ground.

Q. As these goods came from the kiln, were the colors uniform, those in the same kiln? Did they vary or not?

A. They varied in the same kiln; I frequently saw them draw them from the kiln.

Q. Therefore there was a variation with every kiln?

A. Never saw a kiln in which there was not.

Q. What would cause that? Are you expert enough to state that?

A. Well, I should say a lack of ability to have proper colors, and to place them in the proper place in the kiln; that's what I should say caused that.

Q. Defective management then?

A. Yes, sir.

Q. What was the result of this upon the trade you had in the city of Boston?

A. The same result that I have just explained a few moments ago; we had to replace nearly all the goods we shipped them; it has given us a very bad standing in the city of Boston.

Q. What with reference to the trade of Abraham French & Co.?

A. If everything had been as entirely represented to us, when we went in to it, we should have sold Abraham French & Co. $50,000, without any question; there is no question about that; it would have increased our business,

in that particular branch, to $100,000 more; it was a very serious loss.

Q. That you lost entirely?

A. Yes, sir.

Q. By reason of the furnishing of these defective goods?

A. Yes, sir.

Q. Those were all, as I understand it, under-glazed decorated goods?

A. Yes, sir.

Q. Did you make a sale of this same quality of goods at the Monongahela House, Pittsburgh?

A. Yes, sir.

Q. That is the same sale mentioned by Mr. Magowan?

A. Yes, sir.

Q. You individually made that sale?

A. I made that sale in the presence of Mr. Alpaugh; I telegraphed for a trunk of samples, and Mr. Alpaugh came out there and I made that sale.

Q. What was the amount of that sale?

A. I won't say positively, but I think it was from $1,500 or $1,800 worth of goods—the first shipment; I won't say positively.

Q. What was the result, as far as the goods were concerned.

A. Why, the result was that we had to replace, several times, large quantities that they sent us memorandum of, and Mr. French brought us memorandum of, with those samples; eventually they threw our goods out, and we have lost the whole trade all through the entire trade.

Q. You had been selling French prior to this, had you not?

A. Yes, sir.

Q. From this factory?

A. Yes, sir.

Q. How many dinner sets would you sell him, say, for instance, in a year, prior to the furnishing of these goods in 1885?

A. We were just getting Abraham French & Co.; we had sold them $18,000 or $20,000 worth of goods in a year prior.

Q. Of course, you didn't sell any after that?

A. Very few goods after that, as compared with what we had been selling before, very few.

Q. Did you try to sell them after this?

A. Very much; went there especially to sell them; the last time I was in Boston, they ordered a few dozen of decorated jugs; probably six or eight dozen; that was the only thing they would give me an order for—turned us clear out; wouldn't order any goods at all.

Q. Did you make the sale at Chicago, that had been referred to here?

A. Yes, sir.

Q. Those goods were to be used where?

A. At the Palmer House; I intended to have brought the contract here, signed by the Palmer House people; I have also the Parker House, and Young's Hotel, and the Monongahela House and the others that I have spoken of.

Q. I wish you would bring them. What was the quality of the goods that you were to furnish them?

A. Under-glazed goods.

Q. The same as you have been speaking of?

A. Yes, sir.

Q. What was the amount of the order that you first had from the Palmer House?

A. The order from the Palmer House was, as near as I can remember, in the neighborhood of $2,500, and, if the goods had turned out according to contract, they agreed to give us an order for $10,000 worth; I think the first goods, under that contract, went in April or May, 1885.

Q. That is just before you were connected with the firm.

A. Just before, or about that time?

Q. To whom were they consigned?

A. French, Potter & Wilson, of Chicago.

Q. Who are they, sir?

A. They are large china, crockery and glass dealers; one of the largest houses in the Western country.

Q. Did you go out there after the goods were shipped?

A. After the goods were shipped they were taken to the Palmer House, opened up, put in the heaters, and examined

by the Palmer House people, and they proved to be very much inferior.

Q. Please state only what you know about it.

A. I was just going to explan that; French, Potter & Wilson telegraphed me that the Palmer House had rejected the goods; couldn't do anything with them.

Q. (By Mr. Aitkin)—You said something about a heater?

A. Well, that's what they told me; however, I went to Chicago and found the Palmer House people, including Mr. Palmer and Mr. Howe; they said that they had examined the goods, and called in experts, and that the goods were crazed and anything but like the sample submitted, which were taken from our stock and selected for the occasion; they were such goods as we sold the Parker House and Young's Hotel, Boston; they refused to take the goods, said they were soft-bodied, and crazed all up before they were put in service—couldn't take them at any price; I went over them, piece by piece—broke up lots of them just to see the body; that closed the deal with them; we lost that whole entire order; had the goods re-shipped to Trenton; we lost all the expense of securing the order, the expense of shipping the goods back and forward, and the trade in Chicago.

Q. (By the Court)—Did you see them after they came back here?

A. Yes, sir.

Q. Did Mr. Wood and Mr. Barlow see them?

A. Yes, sir.

Q. After they came back here?

A. Yes, sir; and on their return—on the return of these goods from Chicago, we found that we had about $5,000 or $6,000 worth of goods right on the floor, that were all made the same way these goods were made that came from Chicago; the whole entire business had to be re-fired again—that means additional expense, re-firing and the risk of the goods.

Q. (Further direct)—Did you also examine the goods here as well as at Chicago?

A. Yes, sir.

Q. What was the result of your examination; what was the trouble with the goods?

A. The goods were short-fired.

Q. Short-fired?

A. Yes, sir.

Q. Was there any defect in the coloring?

A. The color of air varied in these goods.

Q. Was that made an objection by the Chicago parties?

A. They didn't make that actual objection; they didn't mention that coloring business in Chicago, it was the soft-bodied goods; they got crazed before they got put in service, and that killed the whole transaction.

Q. What would cause that crazing?

A. Short-firing.

Q. In that case?

A. Yes, sir; in that case.

Q. (By the Court)—They might have become crazed because they were short-fired, but what was the immediate cause—what produced the proof that they were short-fired?

A. We put some goods back in the gloss kiln where we fired our plain white goods, and they came through and stood as well as the plain white we were making stood.

Q. (Further direct)—What I want to understand now is, what produced the evidence—what was the cause directly operated upon the goods themselves that gave you proof in Chicago that they were crazed?

Q. You can tell when a piece of ware is not fired properly; it is chalky; I saw the crazage myself.

Q. Was it any exposure to heat or cold or use?

A. No, sir; some of the goods manufactured on the same process were crazed at the pottery.

Q. Goods that hadn't been shipped at all?

A. Yes, sir; goods that laid at the pottery.

Q. In a space of time, more or less, you have this evidence of the under-firing or short-firing by this exhibition of what you call crazing?

A. Yes, sir.

Q. (By Mr. Gummere)—Crazage are cracks in the goods?

A. Yes, sir.

Q. (Further direct)—You say that Mr. Wood and Mr. Barlow saw these goods after they came back from Chicago?

A. Yes, sir.

Q. Were you present?

A. Yes, sir; I showed them to them myself.

Q. What did they say in reference to the firing of them?

A. They made some excuse that they were short-fired; they acknowledged it; they acknowledged the fact that they were short-fired.

Q. Who else was present?

A. Mr. Alpaugh.

Q. That was at the pottery, after the goods had been returned?

A. Yes, sir.

Q. The Palmer House is the largest hotel in Chicago?

A. Yes, sir; about a third more, any way, than any hotel; I think it is the largest house in the Western country.

Q. Is it a new hotel?

A. No, sir; comparatively, since the fire.

Q. What is the character of the Young's Hotel and the Parker House, in Boston?

A. Young's Hotel and the Parker House, in Boston, will compete with any house in the country in point of management, and are considered so by the public.

Q. What is the character of the Monongahela House, at Pittsburgh?

A. That was *the* hotel in Pittsburgh until the New Anderson has been built; it is one of the first-class hotels in Pittsburgh; it is the headquarters for the crockery and glass men; that is what hurt us so badly; it hurts us more than we can estimate.

Q. Do you know the firm of Burly & Co., Chicago?

A. Yes, sir.

Q. What business are they in?

A. They are in the retail china and glass and hotel supply goods.

Q. Have you made an arrangement to supply them with some kind of goods?

A. They were already prepared to place a large Elberon pattern of this under-glazed decorated hotel goods.

Q. Did you lose that order after this failure at the Palmer House?

A. Yes, sir; I sold them, previous to that winter, a nice little lot of goods, and after the failure of the goods in the Palmer House, they have refused to buy anything, except a few dollars' worth of goods at a time. They come out point blank and state they heard so much against our goods, the reputation was so bad, there was so much crazage, that while I made all the excuses and everything that was reasonable to make, yet they couldn't conscientiously, until they were confident they were reliable; I lost that entire business.

Q. How long did the manufacture of this class of goods continue after this? Was it continued?

A. Shortly after my admission to the firm, why, we discovered they couldn't make these goods successfully, and the only thing we did was to try and bring through small quantities to patch up orders where we had guaranteed these hotel supply dealers with goods for the hotels. They had given us these orders instead of placing them in England and France; Mr. Magowan was very much in favor of not making any of the goods; what we made was at a loss right along.

Q. You came into the firm shortly after this, in May, 1885, I think?

A. Yes, sir; in May, 1885.

Q. And the manufacture of these goods were discontinued with the exception you have made?

A. Yes, sir.

Q. Did you have any trouble then?

A. Always the same trouble and difficulty with these goods.

Q. For the same causes?

A. Yes, sir.

Q. (By the Court)—Do I understand you to say that the same trouble and difficulty which you had with the goods that were manufactured and sold to the Boston, Chicago and Pittsburgh houses, continued then—after this trouble with the Boston, Chicago and Pittsburgh houses, the same trouble continued.

A. Yes, sir; all that were made that way; that is, those that were done on the bisque; we had the same trouble

with what was done on the glaze as far as the running of the color is concerned.

Q. (Further direct)—These goods are made to supply the deficiency after you came in the firm?

A. Yes, sir.

Q. You made the sales for your salesman—you made this sale at Chicago, and you came in the firm before you went out to Chicago?

A. Yes, sir.

Cross examination (by Mr. Aitkin):

Q. You sell all the goods of your firm manufactured by them?

A. No, sir; I didn't sell them all; I sold all I could.

Q. So I supposed. The goods you spoke about having sold, and which were defective, were but a very small portion of the production of the pottery, were they not?

A. They were a large portion of the decorated pottery at that time.

Q. What other kind of goods were they manufacturing at the same time?

Q. They were making—experimenting with these bone china and vitrified china goods; they were not making any granite; just that grade of particular china and the under-glazed and the bone; they were making those decorated goods—under-glazed. I don't know anything about what they may have been experimenting with outside of the samples they had shown at different times.

Q. During the time you were selling for them as commission agent, and since that, they manufactured a great many goods, which were sold and paid for, and which was perfect goods?

A. Yes, sir; a good many goods sold and paid for.

Q. And which was all right?

A. Yes, sir.

Q. (The Court)—I would like to ask whether the goods that were sold and paid for, or whether they were other goods that were sold and paid for?

A. They got paid for a great many goods that were sent out, of course.

Q. (Further cross)—These goods which you have condemned were but a very small part of the products of the property, were they not?

A. I don't know about the products of the white work, but I know they were a large proportion of the decorated ware.

Q. They were making a large proportion of white ware?

A. Naturally, there was white ware.

Q. Were not they very successful in the manufacture of white ware?

A. I stated it previously to this.

Q. Now, about white ware?

A. It varied in color and crazed.

Q. All of it?

A. Oh, no, sir.

Q. There was a great deal that was perfect?

A. Yes, sir.

Q. You are magnifying the crazed ware. Did they make anything that was perfect?

A. Yes, sir; they made a great deal that was good and a great deal that was bad.

Q. Had not these men the reputation of being first-class manufacturing potters?

A. I never heard it stated so.

Q. Was not it sent out from the concern in circulars that they had first-class manufacturing potters at the head of their establishment?

A. That's before I connected myself with the firm. I heard Mr. Alpaugh and Mr. Magowan state to me that they thought they had the best managers in the country; they stated that frequently and at various places.

Q. When?

A. Shortly after they employed them.

Q. How often afterwards?

A. A number of times; I can't state definitely.

Q. How long subsequently to their employment of them?

A. Messrs. Alpaugh & Magowan did not confide all their private business to me, and they probably knew a great deal and thought a great deal about Mr. Barlow and Mr. Wood that they didn't tell me.

Q. Well, how often did they mention this?

A. I have stated that I have heard them on a number of occasions.

Q. How long after they had entered their employment; up to what period?

A. I think in 1884—the early part of 1884.

Q. In 1883 and 1884?

A. Yes, sir.

Q. Not since?

A. Not since; they never expatiated very much on their ability since that.

Q. When you came into the concern in May, 1885, didn't you understand them that they were good, practical manufacturers of pottery ware?

A. I understood that they had convinced Mr. Alpaugh and Mr. Magowan that they were on the right track to make plenty of money with this under-glaze goods, and, knowing the whole trade very thoroughly, and being personally acquainted with most of the proprietors of the various hotels throughout the country, I thought there was an opportunity for me to sell a very large quantity of these goods, and that was one of the inducements that led me to go in there, thinking that these people could make this particular class of goods, but when I got in there I very soon found out the truth of the thing; in fact, the very first month this Palmer House business exploded, and from that on I made up my mind that I had gotten in the wrong place to make money.

Q. This bone china, that was a pet of yours?

A. Yes, sir.

Q. You were the one that insisted upon making that?

A. Yes, sir.

Q. You suggested and insisted upon it?

A. I didn't insist upon it; I suggested it because they had shown samples of bone china that were very beautiful.

Q. Which were made at your suggestion?

A. I don't remember that; I wasn't in the firm when that was done.

Q. I beg your pardon; I thought that was in 1885?

A. I haven't a very clear recollection of that date or month.

Q. Doesn't all earthen ware craze at some time?

A. Some of it does; not all; some more and some less.

Q. Doesn't a very large proportion of it craze under heat—doesn't that test it?

A. That is a test which affects poor goods very quickly; that is a test the people apply.

Q. You spoke about the heater. What did the Palmer House people do?

A. They washed the goods and took all the straw out of them, and then discovered they were crazed.

Q. Without any heat?

A. Yes, sir; and the same goods were at the pottery crazed; these which were sent to Chicago, were not crazed as far as the selectors discovered; if they discovered it, they would not have selected them.

Q. They must have been very careless to send out such a large quantity crazed?

A. They were packed up quickly, after being taken from the kiln; I think this particular order was hurried up.

Q. Would hurrying these goods through the kiln sometimes cause them to be crazed?

A. They have got no business to do that?

Q. Suppose they did do it?

A. It would be a very foolish thing for a fireman to send a kiln through short-fire.

Q. Suppose the owners ordered such things to be done?

A. No sane man would give an order of that kind; short-fired goods are worthless.

Q. Did you tell James Barlow, in New York, that you represented the printed ware to be something superior to regular goods, in order to induce hotel men to take them?

A. If you could hear us salesmen tell stories about our goods, you would hear a good many stories; I represented goods to be up to sample; we always submitted samples and represented the goods to be like sample.

Q. Whether you expect them to be equal to it or not?

A. We are supposed to only submit samples that are right from the stock.

Q. My question is whether you did not represent them to be something superior, which was not so?

A. We represented the goods and talked about their beauty and all that thing; we sometimes deliver quite a lecture on the beauty of some of these colors that Mr. Wood produced.

Q. Do you think it possible for any manager to bring all the printed ware out of a kiln of the same color?

A. I do not; no, sir; I do not think they can possibly do that; but the variation of the color, with a practical man, would be so slight that we can sell our production without sacrificing very much of the goods that come through the kilns; they have some little trouble with variation of coloring in all manufactories.

Q. Did not both Mr. Wood and Mr. Barlow, at different times, remark in your presence that it was a mistake to sell the printed ware to hotels, that it wasn't suitable to their purpose.

A. After they discovered that they couldn't make them durable; not until then.

Q. Did you object to Mr. Wood using—printing like the English on the body of the printed ware?

A. Using a body?

Q. Yes; making it like the English.

A. After Mr. Wood had made all these goods I have spoken about, why, then he made a statement that in order to bring under-glazed decorations through successfully they would have to be on a cheap body, similar to the English; that was after all the damage was done.

Q. Didn't you continue on making that printed ware after this time?

A. Only in several small quantities to match up where we had made contracts.

Q. What kind of ware were you making after you came in?

A. The regular grade that I have spoken of.

Q. What kind were they?

A. Imperial china and decorated also.

Q. After you came into the concern, was the product im-

proved in grade, after May, 1885, as long as Barlow and Wood were there?

A. I didn't see any improvement.

Q. Didn't see any improvement? All the defects you have spoken of continued?

A. There wasn't such a quantity of under-glazed goods made; making surface decorations.

Q. Was that all right?

A. The selection of the goods sent out caused a great deal of trouble, and a good deal of trouble with the blurring of the over-glazed. I attributed it to the poor management of the decorating shop.

Q. That vitrified china that you spoke about in 1884; Mr. Wood was called in for an opinion of it?

A. He was called in for an opinion of it.

Q. And Mr. Wood stated that he could make it beyond question?

A. Yes, sir.

Q. Who had wished that vitrified ware to be made, of the firm, do you know?

A. I don't know; I presume they were all very anxious to make the vitrified ware; I may have expressed it, and have frequently expressed; I wish we could make the china.

Q. Did Mr. Wood object to making it because you couldn't make it in carrying on the manufacture of the other different kinds of ware in the pottery at the same time?

A. I don't recollect about that.

Q. You don't recollect about that?

A. No, sir; I don't recollect about that; because I was so much taken up with my outside business that I cannot remember distinctly all the conversation that we had; I wasn't then a member of the firm, and I only went down to Trenton once a week, and sometimes once in two weeks.

By the Court:

Q. I would like to have the witness state whether there was no other wares manufactured at this establishment by these gentlemen, Mr. Wood and Mr. Barlow, which were put upon the market and sold?

A. Besides those under-glazed goods?

Q. What I want to know is whether the whole attention of these gentlemen were devoted to such goods, or whether they manufactured other goods?

A. Well, now that you have mentioned it, I forget—

By Mr. Vroom:

Q. Whether there were not two classes of goods made, decorated and undecorated? That class of goods that you have been examined about was the decorated goods?

A. Yes, sir.

Q. They also manufactused white ware?

A. Yes, sir.

Q. That is still made there and has always been?

A. Yes, sir.

Q. The proportion of goods that was made there, which was the greater, the decorated or the undecorated?

A. We sell more decorated ware than we do white plain ware.

Q. The sales of the decorated ware are greater than the plain white ware?

A. Now they are.

Q. How were they before?

A. I could only tell you from my own sales; my sales were larger in decorated than in plain white

Q. In speaking of the vitrified china, you say you were present when a conversation was had with reference to it?

A. One of the conversations.

Q. Did Wood and Barlow show samples in the modeling shop of vitrified china they had made?

A. Yes, sir; in the modeling shop I remember seeing a sample having been made a number of years.

Q. Did they claim they made it?

A. Yes, sir.

Q. That's all.

Re-cross:

Q. Can you give us any idea of what proportion of the under-glazed printed ware was sold in proportion to the other business?

A. I cannot say, because we have discontinued the manufacture of it—virtually discontinued the manufacture of it shortly after I went in and discovered what a failure it was.

By the Court—It seems to me that all these questions tending to the point now suggested would be much more certainly answered by the books.

Adjourned to Friday the thirty-first day of December, A. D. eighteen hundred and eighty-six, at one P.M., at the State House, Trenton, N. J.

Before His Honor, John T. Bird, Vice-Chancellor.

Appearances—James S. Aitkin, Esq., counsel for complainants; G. D. W. Vroom, Esq., counsel for defendants.

Transcript of shorthand report of evidence taken upon the trial of the above-stated cause, at the Vice-Chancellor's chambers, Trenton, N. J., on Thursday, the tenth day of March, A.D. 1887.

Robert Gruesser, a witness produced on the part of the aforesaid defendants, having been duly sworn according to law, deposeth and saith:

Direct examination (by Mr. Vroom):

Q. Where do you reside?

A. 118 Spring street, Trenton, New Jersey.

Q. What is your business?

A. Now I am a salesman.

Q. A pottery salesman.

A. Yes, sir.

Q. How long have you been in the pottery business?

A. In the neighborhood of twenty years.

Q. How long as a salesman?

A. Well, about six or eight years.

Q. And before that time?

A. Before that I was in a pottery.

Q. You were in a pottery attending to what?

A. Warehouse duties.

Q. Do you know the defendants, Alpaugh & Magowan, in this case?

A. Yes, sir.

Q. Were you ever in their employ?

A. Yes, sir.

Q. At what time?

A. I went there on the first of January, 1886.

Q. And continued there how long?

A. Until about the first of September.

Q. Of the same year?

A. Yes, sir.

Q. Do you know the complainants, Mr. Wood and Mr. Barlow here?

A. Yes, sir.

Q. Were they at that time employed in the same pottery?

A. Yes, sir.

Q. What were your duties at the time of your employment; I mean—I don't mean all the time, but during the time that they were there?

A. Yes, sir; I understand.

Q. They continued there up to what time?

A. March, I think.

Q. March of the same year?

A. Yes, sir.

Q. What were your duties?

A. My duties were, overlooking the ware-room, keeping up the stock, and attending to the orders and shipping, and superintendent of the ware-house department.

Q. What was the condition of the warehouse department when you came there?

A. It was in a very bad condition.

Q. In what respect?

A. Well, there did not seem to be anything in its proper place; everything seemed to be upside down; there was no kind of shape to it.

Q. Did you have to put it in order?

A. Yes, sir; I put it in order.

Q. What else did you have to do with the stock that was there?

A. I attended to the selecting of the stock there.
Q. You attended to the selecting of the stock there?
A. Yes, sir.
Q. What did you discover in making the selection of the stock?
A. Well, I found that we had a great deal of bad stock there.
Q. What kind was that stock which you called bad stock —what quality of ware?
A. Most of it was what they called under-glazed decoration.
Q. Did you ever go over it and estimate the amount of it?
A. Well, I did; yes, sir; to some extent.
Q. Who went over it with you?
A. Mr. Mulford.
Q. The book-keeper?
A. Yes, sir.
Q. Of the establishment?
A. Yes, sir.
Q. How much did you find of that ware?

Objected to by complainant's counsel, unless it be shown that no memorandum in writing was made of such estimate.

Q. You have no memorandum in writing of it?
A. No, sir.
Q. How much of that kind of stock did you find there?
A. Well, we found in the neighborhood of about $15,000 worth.
Q. What did you do with it?
A. Well, we closed it out the best way we could.
Q. (By Mr. Aitkin)—You did what with it?
A. Sold it off.
Q. (Further direct)—Closed it out the best way you could?
A. Yes, sir.
Q. What efforts did you make to sell that entire lot?
A. Why, I offered it to Mr. Maines, I think, for $3,000.
Q. Mr. Bishop Maines, you mean?
A. Yes, sir; Mr. Bishop Maines.

Q. Why did you offer it at so low a price as that?

A. Well, I tried to get a better price for it before, but I could not do anything with it; we could not get any more, so, then I put it down about the price of white thirds.

Q. Did he accept that offer?

A. No, sir.

Q. He would not accept it?

A. No, sir.

Q. What was the trouble with the goods?

A. Well, they were crazed and mismatched—off color.

Q. What do you mean by mismatched?

A. The color did not match.

Q. Mismatched in color?

A. Yes, sir; some would be light, some would be dark, and some would be medium.

Q. Was the crazing extensive?

A. Yes, sir.

Q. That was the stock that had been in the warehouse?

A. Yes, sir.

Q. And was crazed in the warehouse?

A. Yes, sir.

Q. While you were there was that stuff removed from the ware-house?

A. Yes, sir.

Q. And sold?

A. Yes, sir.

Q. How was it sold?

A. It was sold in lots.

Q. Who to?

A. To what we call the Jew trade—auctioneers.

Q. At what rate did you sell it?

A. At about the rate of white thirds—third class.

Q. Well, what would that be?

A. About 25 to 30 cents on the dollar.

Q. (By the Court)—Do you mean of its original cost, or the value if perfect?

A. These were imperfect goods.

Q. (Further direct)—What do you mean by 25 cents on the dollar of its value?

A. At a discount of seventy to seventy-five per cent. off.

Q. Seventy to seventy-five per cent. off of what it would have been worth if the goods were perfect?

A. Yes, sir.

Q. You say you sold it about the price of plain white thirds?

A. Yes, sir.

Q. Have plain white thirds a regular stated value?

A. Not always; as a general thing it is most of it sold at about seventy to seventy-five per cent. off.

Q. Do you know anything about the manufacture of this ware, when it had been manufactured?

A Well, from what I understood—[interrupted].

Objected to.

Q. (By Mr. Aitkin)—From your own knowledge, he asks.

A. Well, some of it had been manufactured the year before I came.

Q. (Further direct)—Some had been manufactured the year before you came, and you found them there?

A. Yes, sir.

Q. You don't know of your own knowledge who manufactured that? Did you ever speak to Mr. Wood about it?

A. I think Mr. Wood told me that he made it.

Q. Then you did speak to him about it?

A. Yes, sir.

Q. Did you manufacture any during the two months he was there?

A. We manufactured some of what we call on the glaze, but no under-glazed.

Q. Do you know of any difficulty with the white ware that was manufactured and brought into the warehouse while you were there, and while Mr. Wood was there?

A. We had some difficulty in filling orders, to get them out good.

Q. What was the difficulty?

A. The difficulty was they did not run as good as they ought to.

Q. Well, you say they did not run as good as they ought to—what was the defect?

A. The defect was that there were too much thirds from the kiln.

Q. Was there anything the matter with the ware?

A. Some of it was crazed when we got it in the warehouse.

Q. When you came there in charge of the warehouse did you take charge of all the goods that were put away?

A. Yes, sir.

Q. What was the condition of the goods in the bins?

A. In what way do you mean?

Q. What kinds of goods were there—what quality of goods?

A. Well, there was seconds and thirds and bests, all mixed up, some of them.

Q. In the bins?

A. In the bins and on the floor in the ware-room.

Q. In the entire shop, so far as the goods were concerned, did they require to be re-arranged?

A. Yes, sir.

Q. You did that?

A. Yes, sir.

Q. You went over all the goods that were on hand?

A. I went over all the decorated goods, and my help went over the white goods.

Q. In speaking of this lot of goods that you speak of as being defective, you refer entirely to the decorated goods?

A. Yes, sir.

Q. That is all.

Cross-examined (by Mr. Aitkin):

Q. At the time you speak of, the first of January, 1886, when you took this account of the ware in the rooms—it was an account of stock on the first of January?

A. No, sir; it wasn't an account of stock; I counted this stock to sell out.

Q. You did not take an account of stock, then, that was in the pottery?

A. No, sir; I took an account of stock that was decorated.

Q. An account of all the decorated ware?

A. All the decorated ware.

Q. You did take an account of stock of the decorated ware?

A. Yes, sir.

Q. Was that put in writing?

A. We made a memorandum of it at the time.

Q. You made a memorandum of the account of stock that you took?

A. Yes, sir.

Q. What became of it?

A. Well, I did not make it—I don't know.

Q. Who made it?

A. Mr. Mulford.

Q. Do you know what became of it?

A. I don't know, sir.

Q. You say your assistants took an account of the white ware department; is that so?

A. I did not say that?

Q. What did you say?

A. I said that my assistant arranged the white ware department.

Q. Did you take an account of the stock of white ware?

A. No, I did not.

Q. Was there an account taken at that time?

A. There was.

Q. Was an account taken of everything in the pottery at that time; a general account taken of stock on the first of January, about?

A. I think there was.

Q. And wasn't the part that you took—the account that you took—a part of the arrangement of taking that stock?

A. How is that?

Q. Wasn't what you did in taking an account of stock of the decorated ware, a part of the general stock-taking of the pottery?

A. No, sir.

Q. Was there an account taken otherwise?

A. I took that account for my own satisfaction.

Q. Was there an account taken subsequently?

A. That I cannot say.

Q. You don't know of any other account being taken of it?

A. Only the time when they took stock.

Q. When did they take that?

A. I think they took that in the month of January.

Q. Shortly after you went there?

A. I think so.

Q. Had anything been done before they took that account of stock with the ware that you took an account of?

A. In what way?

Q. In any way. Had anything been done with it?

A. No, sir.

Q. When was the re-arranging done?

A. That was done in January.

Q. After they took their account of stock?

A. Oh, no; we had to re-arrange it before we could take the stock.

Q. Then you re-arranged that before you took the account of stock?

A. Yes, sir.

Q. This stock you speak of was mostly under-glazed decorated ware. Now, can you tell us whether you separated that from the other ware in the shop? Did you keep the account separate from the under-glazed ware and other defective ware, or was it all put together?

A. I don't know about that.

Q. What proportion of that under-glazed ware was there in the wareroom when you took the account of stock?

A. What we counted there at that time? We counted about $15,000 worth.

Q. How much else was there there?

A. Well, I presume there was a great deal more there.

Q. How much more would it amount to?

A. Well, I cannot say positively.

Q. Cannot you give us any idea?

A. Well, I should judge there would be about $25,000 worth.

Q. Twenty-five thousand dollars' worth altogether?

By the Court—Does the witness say that?

By the Witness—Yes, sir; altogether.

Q. That is the decorated ware of all kinds?

A. Yes, sir.

Q. That was lying around in the decorated department?

A. In the warerooms.

Q. Does that include all the decorated ware that was then on hand?

A. Of course, it did.

Q. Good, bad and indifferent.

A. Well, there was no good there.

Q. If there was any good, you got it?

A. Oh, yes; if there was any good there, we got it.

Q. Was some of that over-glazed decorated ware in a biscuit state, that you took an account of?

A. No, sir.

Q. When was the stock sold that you referred to?

A. Why, during the time I was there.

Q. Was it during the time, or before or after Mr. Wood left?

A. Well, some when he was there and some after he went away.

By Mr. Aitkin—I suppose, may it please your Honor, that the value of this witness' testimony will depend upon that memorandum being produced, of which he spoke. If it is not produced, being made at that time, his testimony would amount to very little, unless they should account for its loss.

By Mr. Vroom—We haven't any memorandum; the witness has not said he made any.

By Mr. Aitkin—He said that it was made at the time that he took this account of stock.

By Mr. Vroom—Yes, but you are confusing two things, the account of stock made by the firm, and the account of stock that he made when he took charge of the warehouse.

By the Court—I understood the witness to say that a gentleman with him made some memorandum of the stock at the time it was taken.

By Mr. Vroom—Yes, sir; but it wasn't made by him, or for his use.

By the Court—Very well; it can easily be settled whether such a memorandum is under the control of the defendants or not; if anybody took it for them, and they have it, it ought to be produced.

By the witness—We took it in an off-hand manner.

Q. (By Mr. Vroom)—Do you know what became of it?

A. No, sir.

Q. (Further cross)—Did you make a report of it?

A. In what way?

Q. To the firm—did you report it to the firm?

A. Yes, I think I told Mr. Alpaugh about it.

Q. Do you know whether they made any record of it?

A. No, sir; I do not.

Q. That is all.

Ewing C. Mulford, a witness produced on the part of the defendants, having been duly sworn, according to law, deposeth and saith:

Direct examination (by Mr. Vroom):

Q. You live in the city of Trenton?

A. Yes, sir.

Q. What is your business?

A. I am a book-keeper for Alpaugh & Magowan.

Q. How long have you been there?

A. Since 1883.

Q. Are you there now?

A. Yes, sir.

At this point, it appearing that the witness had not brought the journal of the pottery with him, he was withdrawn from the witness stand in order that he might procure it.

Spencer M. Alpaugh, a witness produced in his own behalf, having been duly sworn according to law, deposeth and saith:

Direct examination (by Mr. Vroom):

Q. You reside in Trenton?

A. Yes, sir.

Q. How long have you lived here?

A. About thirteen or fourteen years.

Q. And you have been engaged in what business during that time?

A. The pottery business.

Q. First as a salesman, I believe?

A. Yes, sir.

Q. And afterwards you bought an interest in the Coxon pottery?

A. Yes, sir.

Q. And that is the pottery now owned by you and Mr. Magowan, the other defendant in this case?

A. Yes, sir.

Q. When did you first obtain or procure an interest in that pottery?

A. In 1876.

Q. November, 1876?

A. Yes, sir.

Q. When was Mr. Magowan first associated with you in the pottery?

A. About 1880.

Q. And you bought out the Coxons' interest when?

A. In 1883.

Q. Do you know these complainants, Mr. Wood and Mr. Barlow?

A. Yes, sir.

Q. How long have you known them?

A. Three or four years; three years.

Q. When did you first become acquainted with Mr. Wood?

A. I first met Mr. Wood at the Trenton Rubber Works office.

Q. When was that?

A. In April, 1883, I think.

Q. What was he at the Trenton Rubber Works office for?

A. He was there with a view of arranging to come with us as superintendent of the factory, with Mr. Barlow.

Q. Who else was present?

A. Mr. Barlow and Mr. Magowan.

Q. What took place at that time?

A. Mr. Magowan notified me that Mr. Wood and Mr. Barlow would be at the Trenton Rubber Company's office to submit an agreement to us; that they had talked the matter over with a view of coming with us to manage our pottery; after we had talked a little while, they commenced to read an agreement which Mr. Wood handed to Mr.

Magowan; Mr. Magowan read the agreement, and when he came to the clause guaranteeing the $2,000 over and above the profits he said that was not according to the understanding, and I objected to it.

Q. Who said that?

A. Mr. Magowan, and I objected myself, and then asked Mr. Wood what guarantee we would have that he would make that amount of money for us, and he said he would not want to sell his profits for $10,000; I then asked him if he knew all about the pottery business, and he said he did; that both of them knew all about the firing of the kilns and the mixing of the bodies and the glazes, and all about the decorated department; and I then asked him about how much money they would expect to make for us, and he said our profits, with our large facilities and the quality of the goods that we were going to make, would not be less than $50,000 to $60,000 a year; I told them then that if we made $40,000 to $50,000 I would be perfectly satisfied, and, with that assurance, I agreed to sign the agreement with Mr. Magowan; that was about all that took place then.

Q. You say that was about all that took place then; was anything said about any particular kind of ware in your presence?

A. They were going to make, with the large facilities of our pottery, a superior quality of ware; they were going to make the imperial china, and went on to say further that he knew all about making vitrified china, hotel china and bone china, which was something that had never been produced in this country before; he also spoke about underglazed colored goods, which was something that had never been produced in this country; he said he knew all about that.

Q. That was Mr. Wood who was the spokesman and made those representations?

A. Yes, sir.

Q. That, then, was the only time that you saw these complainants.

A. I met Mr. Barlow, I think, one evening previous to

that—about two weeks or a week previous—I cannot tell the time exactly.

Q. Did you have any conversation with him then?

A. No, sir; I was just merely introduced to him.

Q. Was there any conversation you had prior to this agreement except this you have spoken of?

A. No, sir.

Q. The agreement was then executed?

A. Yes, sir.

Q. Was this just at the time you had bought out the Coxons' interest?

A. We were then negotiating with the Coxons.

Q. You were?

A. Yes, sir; we had virtually bought the property, but it had not been transferred, or anything of that kind.

Q. The Coxons were the practical men in the pottery up to that period?

A. Yes, sir.

Q. You were not a practical potter?

A. No, sir.

Q. And had had no experience at all in the manufacture of that ware?

A. No, sir.

Q. You had no practical knowledge of mixing or glazing, or anything of that kind?

A. No, sir.

Q. All the business connection you had had with the pottery was that of a salesman in disposing of its goods?

A. Yes, sir; I never had anything to do with the management of a pottery at all.

Q. What was the price you paid—I don't know whether Mr. Magowan swore to that or not—for the undivided interest of the Coxons at that period?

A. I think we paid Mrs. Coxon $80,000 for her interest, and then there was a mortgage we had to pay off of $15,000.

Q. Making $95,000?

A. No; yes, we owned half of the mortgage, so that it would make only $7,500 of the mortgage we paid.

Q. You paid $7,500 of it?

A. Yes, sir.

Q. When did Messrs Wood and Barlow come there and take charge?

A. I think in about two or three weeks, I am not positive which; two weeks, perhaps, after we had had the meeting at the Trenton Rubber Works, and had arranged matters; it took that time to get matters fixed up with Mrs. Coxon.

Q. What part of the work did Mr. Wood take charge of, and what part did Mr. Barlow?

A. Mr. Barlow had charge of the workshops, to examine and superintend the ware, and do the modeling. Mr. Wood was to attend to the mixing of the bodies and the glazes, and the firing of the kilns, and to be the general superintendent of the whole pottery.

Q. Did they confer with you in reference to these matters at all—the management of the affairs, etc.?

A. Yes, sir; after they took charge I looked around and went all through, and they said they would have to have some repairing done in the slip-house in order to make the quality and kind of ware that they had stated they would make for us.

Q. What do you mean by the slip-house?

A. That is where we prepared the glaze and did the mixing of the different materials.

Q. Did you make all the repairs you were requested by them to make?

A. Yes, sir.

Q. Both in the slip-house and elsewhere?

A. Yes, sir.

Q. Who had charge of the purchasing of the materials?

A. Mr. Wood.

Q. Was there any interference with him in that department?

A. No, sir.

Q. Not at all.

A. No, sir.

Q. He had full control of everything?

A. Yes, sir.

Q. And materials of the very best quality?

A. Yes, sir; we always agreed to that; we always supplied him with the very best quality we could get.

Q. After they came there to work what disposition did they make of the men employed there?

A. When they came there they brought some men with them, and it wasn't long before they began to replace some of the old workmen that had been there for a long time, both in the kilns, in the sheds, and in the workshops.

Q. What was the first kind of ware that they started upon making after they came there?

A. What we term the imperial china ware.

Q. What was the shape that they first made?

A. The first shape that Mr. Barlow modeled was what we call the Brunswick shape, square; not absolutely square, but something after the style of what he modeled for Mr. Moses.

Q. How long after he came there did they commence to manufacture that china—the imperial china—that is, to get it out for sale?

A. Well, I think they commenced immediately to make some goods out of their own mixing.

Q. Is this the china that you warranted; did you warrant the imperial china?

A. Yes, sir.

Q. In what way?

A. We guaranteed and warranted it against crazing.

Q. Why did you do that?

A. Simply because we had been told by Mr. Wood and Mr. Barlow that they could make ware that didn't craze.

Q. Did they tell you about this particular ware?

A. Yes, sir.

Q. Did they see the guarantee you sent out—the warranty against crazing?

A. Yes, sir.

Q. Have you got a copy of it?

A. Yes, sir.

Q. Have you got one with you?

A. I think I have.

Q. Here is one which I now hand you; what is that?

A. That is the warranty and guarantee that we sent out with every invoice.

Q. You sent that out with every invoice of this imperial china?

A. Yes, sir.

Q. You sent these out in large numbers?

A. Yes, sir.

Q. What was the result of this china after you had sent it out?

A. Well, after they had taken some little time to get a stock of it—when you commence to make a new line of goods it takes a little time to get them on the market, but we went on as fast as we could, and they made samples and we sent our agents out with them and they took orders, and as soon as we could begin to fill the orders properly we sent out quite a quantity of it, but before the end of the year 1883, the first year they were with us we began to have great complaints of crazed goods, and I mentioned to Mr. Magowan that I did not think—(Interrupted.)

Objected to.

Q. In 1883 you had great complaint of crazed goods?

A. Yes, sir.

Q. Did you say anything to Wood and Barlow about it?

A. I think I called their attention to it.

Q. What did they say?

A. They looked it over and said the goods were easy fired and had too much glaze.

Q. What else did they say?

A. They said they would immediately remedy that.

Q. Well, did they say they would remedy it?

A. They did.

Q. Did they remedy it?

A. They did not.

Q. Did you go on making the same ware?

A. They said they had remedied it, and they went right on manufacturing it.

Q. What quantity of this imperial china was returned to you?

A. Well, it came back in small lots, little lots; I think there was a book of records kept of the goods that were returned.

Q. You have a back record of that?

A. I think so; yes, sir.

Q. Well, then, after your experience with the imperial

china, what did you next undertake to make under their superintendency?

A. The next, I think, was that they suggested to us to make what they said would be a great success, the under-glazed goods.

Q. What do you mean by the under-glazed goods?

A. Well, the proper term for the under-glazed goods would be printing on the biscuit, but they first showed us what they could do on the glossed—printing on the glossed. They produced a few samples and said it would run uniform in color and would be very nice; it was something that had seldom been done in this country, and we concluded that if that was all so, we would try that, and so they produced samples and we took them out the same as before, through our agents, and they took some orders and we commenced to produce it in quantities, but it ran so irregular in color that we had to abandon it entirely.

Q. That was printing on the glost?

A. Yes, sir.

Q. You had to abandon that?

A. Yes, sir.

Q. Did you say anything to Mr. Wood about that?

A. Yes, sir; and he said he would have to change the glaze, and he changed the glaze.

Q. Did he do it?

A. I don't know; we never saw any change in the ware.

Q. Did you abandon the manufacture of that?

A. Yes, sir; then he came and said the proper way in order to bring the goods out of a uniform color would be to print on the biscuit; and he would change his glazing, and would bring it out so that it would run very nice and uniform in color, which he did—that is, he commenced that.

Q. Did he show you samples?

A. Yes, sir; and it was very nice; the color was nice.

Q. What did he say about his ability?

A. He brought it into me and said, "Here is a ware about which I know what I am doing;" he said, "that is all right; I will guarantee that that won't craze;" I said, "How do you know it?" he said, "I know what glaze I

am using; I have got a glaze now that I can fire these goods so as to bring the colors out uniform, and they won't craze;" I said, "That is going to be an important point for us, to have the goods made so that they won't craze;" "Well," he said, "I will stake my reputation and all my money and everything I have on it;" I told Mr. Magowan and Mr. Donoher about that.

Q. What results did you arrive at?

A. We all concluded we would go into it, and Mr. Donoher, our hotel salesman, said he would sell large quantities of it at large profits, so we concluded to go ahead and make it.

Q. Was that the first time you undertook to manufacture this class of ware since you have been in the pottery business?

A. Yes, sir.

Q. The very first time?

A. Yes, sir; since I have been in the business.

Q. When was it that these representations were made to you and you concluded to manufacture it?

A. I think it was in the spring of 1884, or the fall of 1884; I think it was the spring of 1884 we did this under-glazed printing on the glossed, and we ran that along, and then in the summer, the following summer, we commenced to make the under-glazed printing on the biscuit; I have forgotten exactly when we did commence, that is, the exact date, but it was in the summer weather.

Q. In the Summer or Fall of 1884?

A. Yes, sir.

Q. What was the kind of ware, the kind of goods that were produced of this under-glazed—for what purpose was it used?

A. Principally for the hotel business.

Q. Principally for hotel goods?

A. Yes, sir.

Q. Did you advertise that?

A. Yes, sir; very largely.

A. Where did you sell them?

A. We sold quite a large quantity to the Monongahela House, Pittsburgh.

Q. Where else?

A. At the Palmer House, Chicago.

Q. Where else?

A. Young's Hotel, Boston; the Parker House, Boston; that is, not direct, but we sold them through our regular dealers.

Q. Who were your regular dealers in Boston?

A. Abraham French & Co., Boston.

Q. What was the amount of the order for Young's Hotel, do you remember?

A. I think he placed an order with us for about $10,000 worth; it was for a complete regular outfit; the first shipment I think was about $2,300 or $2,400; I don't recollect exactly, it might have been more.

Q. What was the result of the goods?

A. The result was that after they had them a little while we received notice from Abraham French & Co. that the goods were crazing.

Q. What else did they do?

A. They had quite a large quantity of goods that were not yet delivered to the hotel, and they insisted upon sending them back, which they did; Mr. Wood said it was easy fired, and he would fire them over again, but of course it was more expense to us.

Q. Did he fire any of them over again?

A. He did.

Q. What were they worth after they were fired over?

A. Well, some of them wasn't worth anything.

Q. And others?

A. Others came out fairly well; they could not help having some good pieces out of the great quantities, but the losses were very great.

Q. Have you got any of those goods that were sent back from Young's Hotel, as samples, here with you.

A. Yes, sir.

Q. Please get them, will you?

A. Yes, sir; they are from the Parker House, in Boston. Young's Hotel had the same class of goods, but different pattern.

Q. This is under-glazed goods printed on the biscuit?

A. Yes, sir; this is a little lot they sent us, but they said they could send us quantities more. (Singling out a piece.) This piece has never been in use at all.

Q. (By the Court)—That was used for what hotel?

A. Young's Hotel, sir.

By the Court—Do you offer that in evidence?

By Mr. Vroom—Yes; I offer it all in evidence.

Q. These are returned goods of this class of ware that was made by them?

A. If I would have a right to state here—[interrupted].

By the Court—Wait; the proper way will be to get some labels and paste them upon these pieces and have them marked.

By. Mr. Vroom—This is marked Abram French and Company, Boston. They put their mark on it.

By the Court—It will be better to have the stenographer mark these pieces, it will be more satisfactory. In the zinc case recently before me, I had fifty or sixty pieces with pieces of paper pasted on them. It avoids all possibility of confusion.

By Mr. Vroom—I will have that done, sir.

Q. Where else did you say you sent this class of goods, to the Monongahela House at Pittsburgh?

A. Yes, sir. Young's Hotel at Boston had the same class of goods with a different decoration. We delivered some goods to Young's Hotel of that glossed pattern, but they were only tea cups.

Q. These goods are stamped with the name of Abraham French & Co., Boston?

A. Yes, sir.

Q. That is the name of the wholesale dealer to whom they were consigned by you?

A. Yes, sir.

Q. And the sales were made by him to whom?

A. To Young's Hotel, to the Parker House, and also through French & Co. to the Monongahela House.

Q. What was the result of the goods that was sold by you to the Monongahela House?

A. We had to replace them; most of them; we replaced two lots.

Q. You had to replace two lots?

A. Yes, sir.

Q. What was the amount of that order?

A. I think order amounted to about $1,700—$1,500 or $1,700.

Q. What was the complaint with the goods?

A. They crazed; Mr. French brought me some right direct from the hotel, when he was on to Pittsburgh, and they were, if anything, worse than these.

Q. You had to replace the goods.

A. Yes, sir.

Q. And that was, therefore, a total loss to you?

A. Yes, sir.

Q. What did you replace them with?

A. With the same class of goods, after we had re-fired them.

Q. What was the result?

A. We had still to replace some.

Q. So that you were at a loss the second time?

A. Yes, sir.

Q. From the same kind of cause?

A. Yes, sir; and we finally threw them out entirely; we broke some up and threw the balance out.

Q. Where was the third place?

A. We took a very large order from the Palmer House, in Chicago.

Q. Is that one of the largest hotels in the West?

A. Yes, sir.

A. What was the amount of that order?

A. The first shipment was about $2,500; their order was for about $10,000 worth, and we were to make it up and ship it a little later on.

Q. What was the result of those goods sent in the first order to the Palmer House?

A. They unpacked them; they were sold through French, Potter & Willson, in Chicago; they unpacked them and delivered them to the hotel, and they found so many of them crazed that the hotel people would not receive them.

Q. Were they sent back to you?

A. They were all returned, and Mr. Donoher went out

to look them over, and he came back and said they were so badly crazed that—[Interrupted].

Objected to.

Q. Never mind what Mr. Donoher said; they were all returned, were they?

A. Yes, sir.

Q. What became of the balance of the order?

A. It was cancelled.

Q. The balance of the order was cancelled?

A. Yes, sir.

Q. So that you lost the entire order for those goods?

A. Yes, sir.

Q. For the Palmer House?

A. Yes, sir.

Q. Which was $10,000?

A. Yes, sir.

Q. Did you call the attention of Mr. Wood and Mr. Barlow to this?

A. Yes, sir.

Q. When?

A. After the goods were returned.

Q. Did you show them these goods?

A. Yes, sir.

Q. What did they say?

A. Mr. Wood then stated that he was satisfied that those goods were not the kind of goods he thought they would be, and the only thing that would be suitable for hotel service would be the vitrified china, and those goods could not be made to stand among nice underglazed goods, and they would have to be printed on a cheaper body, as the imperial china body was too rich, and they could not be fired hard enough to stand.

Q. That is the way in which he accounted for the crazing of the goods?

A. Yes, sir.

Q. What did you say his suggestion was as to hotel goods?

A. Vitrified china.

Q. Well, what did he say in reference to that?

A. He said he could make it.

Q. Did he produce any samples of it to you at that time?

A. He did soon after; yes, sir.

Q. What did he do in reference to that?

A. His samples looked very pretty, and we concluded that if that could be done, as we had worked up a large hotel trade, if he could make vitrified china for hotel purposes, why, it would be a good thing, and he showed us samples, which were very pretty indeed, as fine as any I ever saw made here in this country, and we thought we would like to see some of them, and we concluded to go into it, and we advertised; we advertised that we could make hotel vitrified china; he made some goods in small lots, plates, dishes and such things as that, and when they came through they were so bad that we threw them out into the thirds pile; we never could sell them.

Q. What was the trouble with them?

A. They came out irregular in color and all different shapes, and some of them were crazed.

Q. Irregular in shape, crazed and so on?

A. Yes, sir.

Q. Were you able to fill orders with them?

A. We never sold a cent's worth.

Q. Therefore, that entire experiment was a loss to you?

A. Entirely all the way through.

Q. Did you have any special kilns made for them?

A. Yes, sir; we had to build a small kiln for the underglazed and vitrified china, where they made bone china.

Q. What did that cost you?

A. The kiln cost somewhere in the neighborhood of $1,200 to $1,500.

Q. What did you do with it?

A. After they left us we tore it down; we had no further use for it.

Q. You spoke about another kind of china Mr. Wood said he could make—bone china?

A. Yes, sir.

Q. Did he undertake that?

A. Yes, sir.

Q. What did he say in reference to that?

A. He showed us a sample which they had produced some

time ago, which was very pretty, indeed; and he said that that could be produced in quantities, and it would be very nice to put in with our dinner ware, as we sold a good deal of china cups, plates and such things as that decorated; and he said he would like to buy some of the materials which he would have to have to make those goods, that he would like to try it; so we let him try it, and I presume that we sold about $400 worth of it, and over fifty per cent. of that was the cost of the decoration, so that we got very little china in value.

Q. Did you discontinue it?

A. Yes, sir.

Q. Why?

A. Simply because he could not produce it.

Q. Did that require extra cost in making it?

A. Yes, sir.

Q. Such as what?

A. We had to go to work and make a lot of cranks, I think they call them, to fire the ware, which was quite an expense, and other appliances too around the shops in order to make that ware; I don't know exactly what they call them, but I would state that our whole experience was that there was a loss to us of at least $2,500.

Q. On the bone china?

A. Yes, sir; including the kiln we had to have built for that purpose.

Q. Were you accustomed to going around through the pottery during the time that Mr. Wood was there?

A. When I would be home I would always go through the pottery and look around and see how things were going on; I made that my business, as I have always done.

Q. Was Mr. Wood always there?

A. Sometimes I would not see him there.

Q. Did you know anything about his habits, with reference to his attendance at the pottery, of your own knowledge?

A. Only as to inquiries I would make as to where was Mr. Wood, and he would be off; nobody had seen him; quite often I could not find him; Mr. Barlow would not

know where he was; he had not seen him that morning or at noon; possibly he might come in in the afternoon.

Q. Was that occasionally or how?

A. Quite frequently I noticed that; I noticed that he would be out of the pottery a good deal.

Q. What was the condition of the pottery under his superintendency?

A. Well, I considered it very bad.

Q. In what way?

A. Well, things was left to run at loose ends, you might say; nothing was kept up in shape; the ware-room was in very bad condition under his supervision.

Q. He had charge of that?

A. Yes, sir.

Q. Up to the time when Mr. Gruesser came there?

A. Yes, sir; Mr. Nevius had charge of the ware-room prior to that, when Mr. Wood came there the first time and then left, and then Mr. Wood had charge of it, and then Mr. Gruesser had charge of it.

Q. Did you examine the drawing of the kilns at all during this period?

A. No, sir.

Q. You don't know anything about the results at all, then, of the kilns?

A. No, sir; I could not keep a record of that, because I was away a good deal of the time.

Q. Did you ever say anything to Mr. Wood in reference to the pay-roll?

A. I used to speak to him about the pay-rolls being extraordinary large for the amount of business we were doing.

Q. What would he say?

A. He said it could not be helped, that he had to have good men to do the work, and that he had to pay for it; I didn't think we were getting the results by far, in comparison with what we ought to have got according to the pay-roll.

Q. You didn't make personally any examination of the results?

A. No, sir.

Q. Yourself from the books?

A. No, sir.

Q. That's all.

By Mr. Vroom—I offer in evidence the warranty or guarantee referred to in this witness' testimony. The same was marked *Exhibit D 1.*

Cross-examined (by Mr. Aitkin):

Q. Do you recollect where you first met James Barlow?

A. I met him one evening; I think at his own house, or somewhere in that neighborhood; I won't be positive whether it was at his own house or not.

Q. Was it by appointment?

A. Not by me; no, sir.

Q. Did you ever meet him at Mr. Robert Sterling's house?

A. It might possibly have been in his house; yes, sir.

Q. Did you make any inquiry about him in regard to his qualifications as a pottery man?

A. Well, I did not so much.

Q. Did you make any?

A. I don't think I did; I knew him by reputation.

Q. You knew him by reputation as a good modeler?

A. I think that was his reputation.

Q. When you first met him, did you tell him that you and Mr. Magowan had made inquiries about him, and that he was recommended to you, and that you were satisfied that he was just the man you wanted for your pottery?

A. That may possibly have been the conversation; that is what we were there for.

Q. Do you recollect Mr. Magowan offering him a salary and what it was?

A. At that time?

Q. Yes.

A. I do not, sir.

Q. Do you recollect whether he offered him an interest in the profits of the concern?

A. I don't think he did, but I don't remember.

Q. Did he tell you he could not accept any proposition from you to go into your employment?

A. I don't recollect about that.

Q. Did he tell you he was under a contract with James Moses for five years?

A. I think that he said he had an arrangement with James Moses; I don't know that he said for how long or in what way.

Q. Do you recollect Mr. Magowan asking him to see Mr. Moses and to try and get released from his engagement with him?

A. I don't recollect it.

Q. Did he tell that Mr. Moses would not release him? 10

A. No, sir.

Q. Wasn't that reported to you?

A. No, sir.

Q. Don't you know that Mr. Magowan saw him repeatedly, day after day; and don't you know that Mr. Magowan offered to stand between him and Mr. Moses and to pay all damages if he would go with you?

A. No, sir.

Q. Don't you know of any such arrangement as that?

A. No, sir. 20

Q. Were you aware of Mr. Magowan's negotiations with Wood and Barlow?

A. Only just a few days prior to our meeting at the Trenton Rubber Works; he told me that he had seen them and made an appointment with them to meet them there.

Q. When you met at the rubber works to consummate the agreement, Mr. Wood had an agreement already drawn, hadn't he, which you signed there?

A. Yes, sir.

Q. Do you recollect signing an agreement with Mr. 30 Barlow individually?

A. At what time?

Q. At that time. You executed an agreement with Wood and Barlow; now did you execute an agreement with James Barlow at that time?

A. I don't remember but the one agreement.

Q. (Handing witness a paper). Look at that paper and see whether that is your signature?

A. Yes, sir.

Q. Was that executed there at the same time as you executed the other contract?

A. Is this part of the other agreement, may I ask?

Q. It is a separate agreement, sir; you may look at it. (Handing witness another paper). Here is the other agreement.

A. I don't know what this refers to, but this is my signature.

Q. I don't ask you that. I am asking whether it was executed at the same time as the other agreement?

A. That I cannot say.

Q. Look at it, and see whether it is the same date, or is witnessed by the same witness, and all that kind of thing; and state whether it wasn't executed at the same time as the other agreement was executed.

A. I don't know but what it was.

Q. Have you any doubt about it?

A. I don't remember.

Q. You don't remember?

A. I don't remember anything but the one agreement; it might have been executed at the same time, but I don't remember it.

By Mr. Aitkin—I offer this in evidence for identification.

Q. Do you recollect, at that time, reading the agreement, and saying, "Mr. Barlow, of course you will defend that suit in case it should arise," referring to the suit with Mr. Moses?

A. I don't remember that.

Q. Do you recollect telling Messrs. Wood and Barlow, at that time, at the rubber works, that they had better give their notices to their several employers, so as to come to you as soon as possible?

A. That may have been spoken of; yes, sir.

Q. Do you recollect that there was something of that kind said?

A. I don't remember.

Q. By the agreement they made with you, they were to go to you in two weeks?

A. Yes, sir; we wanted them to come as soon as we could get them there, because the pottery was virtually stopped.

Q. They appeared about the 21st day of May, didn't they, to take charge of your concern?

A. I think it was.

Q. Did they take charge that day?

A. I think they did.

Q. When they went there, didn't they find the doors locked and admission refused them by Mr. Coxon?

A. That was the first time.

Q. Well, wasn't that the 21st of May?

A. I don't think it was quite as late as that.

Q. What is the date of the agreement?

A. The 7th of May.

Q. Two weeks from that would take them to the 21st of May. Now, I ask you whether they didn't appear there at that time and find the door locked?

A. Possibly that was the time; yes, sir.

Q. (By the Court)—Was it on the 21st of May that they appeared there and were refused admission?

A. Yes, sir.

Q. (Further-cross)—Why?

A. We hadn't got possession of the pottery at that date, although the property had been transferred to Alpaugh & Magowan.

Q. Wasn't Mr. Coxon there, and didn't he state that he was manager still?

A. We had agreed, in buying out the Coxons, that there should be no work on the pottery until the property had been transferred to Alpaugh & Magowan.

Q. Was there a notice served upon Wood and Barlow by Mr. Coxon that he was still the manager?

A. There may have been.

Q. Didn't you take a crowbar and break the door open for them to go in?

A. I simply opened one of the kiln-shed doors so that we could get in there.

Q. Do you know how soon the matter was settled so that they did enter into possession?

A. It was a short time.

Q. It was a matter that was settled by you and Coxon by arbitration, about June 1st, wasn't it?

A. Yes, sir.

Q. What kind of ware did Wood and Barlow make when they first entered your employment?

A. What we termed our imperial china.

Q. That took some time to get ready, did it not?

A. Not very long; they had some things made before we had the new shape models.

Q. Did they continue to manufacture the white granite and C. C. ware?

A. We had a stock on hand.

Q. Didn't they continue that manufacture?

A. Yes, sir.

Q. That was the kind you had been manufacturing under Coxon?

A. Yes, sir.

Q. That was the kind you had a stock of on hand that was very poor?

A. No, sir; we didn't consider it so.

Q. Wasn't that the reason why you wanted to get rid of the Coxons, because they were making such poor ware?

A. No, sir.

Q. I understood you to state just now that it took several months before getting the first imperial china into the market?

A. No, sir; they commenced to make flat ware and some other articles pretty soon after they got things in shape to make them; of course we had some of the white granite and possibly some of the C. C. in biscuit that was made by the Coxon boys, and, of course, that had to be run through, but it wasn't very long before they had some goods that was made of this imperial china, in the ware-room, but not of the Brunswick shape; that took some time to do that.

Q. How long did you continue to make the white granite after they came through?

A. I think we stopped it some time during the first year.

Q. 1883?

A. I think so, but I am not positive about the time.

Q. You are not positive?

A. No, sir; possibly it might have been run on to 1884.

Q. After you stopped that, was imperial china the only ware you made?

A. Yes, sir.

Q. Can you tell me in dollars how many goods were manufactured by your pottery in 1885?

A. I should think about $190,000 to $200,000 worth; not more than that; I should think about $200,000 worth.

Q. Can you tell me how many goods were manufactured during the whole time that Wood and Barlow were with you?

A. No, sir.

Q. You never made any estimate of it?

A. No, sir.

Q. Didn't you consider your ware as good a ware as any made in this country?

A. We thought so.

Q. You claimed so to the trade?

A. Yes, sir; when they first commenced to make it.

Q. Didn't you make an exhibit of it in the New Orleans Exposition?

A. Yes, sir.

Q. Didn't you get the first premium for it?

A. On the decoration; yes, sir; but all the goods sent down there, pretty near, came back crazed. I gave a toilet set away the other day that cost over one hundred dollars to make; I just gave it away.

Q. I didn't ask you that.

A. Well, I just tell you.

Q. Well, the stenographer takes everything down. Now, can you tell me, Mr. Alpaugh, what amount of decorated ware you sold from your pottery in 1882?

A. The amount of the decorated ware?

Q. Yes.

A. All kinds of decorated ware?

Q. Yes.

A. I could not estimate it; I could not tell you.

Q. Can you tell how much of the printed hotel ware, printed on the biscuit, you sold altogether; I mean actually sold and sent out?

A. No, sir.

Q. Have you got a record of that?

A. I could not tell you just at present; I don't call it to mind.

Q. My question is, also, whether you have any record of it at your office?

A. There ought to be a record of sales; yes, sir.

Q. Can you tell us how much was sent back?

A. Yes, sir; we have a record ot that.

Q. But you don't know yourself?

A. Yes, sir.

Q. You only know from the books, I suppose, Mr. Alpaugh?

A. That is all.

Q. Can you tell us when you first made a shipment of bone china to Abram French & Co.?

A. I cannot give you the first date.

Q. Wasn't it in January or February, 1880?

A. I could not tell you what month it was in.

Q. Did you buy some to fill up their order after Wood and Barlow had left you?

A. No, sir.

Q. You didn't?

A. No, sir; but we tried to.

Q. Did you buy any before they left?

A. No, sir.

Q. When you began to make biscuit printed ware didn't Mr Donoher send samples of English biscuit printed ware from Mr. French in Boston for Mr. Barlow to model from?

A. Yes, sir; they wanted some pieces modeled for hotel purposes.

Q. Were the samples as white as your imperial china?

A. Yes, sir.

Q. Didn't you object to his making body constantly for biscuit printing, because you said it would not be as white as your imperial china?

A. No, sir.

Q. Didn't he tell you that your imperial china wasn't suitable for hotel printed ware?

A. No, sir, not at that time.

Q. When did he?

A. When he found it was crazing and all coming back on our hands; after we had received all the goods we had shipped.

Q. After you had taken large orders for the hotel biscuit printed ware didn't you complain to Wood that he was not sending it through fast enough for you?

A. We wanted to fill our orders; we always complained if we did not get our orders through fast enough.

Q. Didn't you complain that he was not sending it through fast enough?

A. That may be; I don't recollect.

Q. Didn't you tell him that if he didn't send it through in larger quantities you would engage another man to do it?

A. I don't remember that.

Q. Don't you recollect of his then demanding to be released from your agreement with him, and that you refused to let him off?

A. I don't remember that.

Q. Don't you know about that?

A. I don't recollect it.

Q. Didn't Mr. Wood tell you previous to your commencing to make the biscuit ware, that he had already seen a piece crazed, and protested against making it with the imperial china body?

A. No, sir.

Q. Didn't he say that if you would allow him to make a body suitable for biscuit china ware, he would make one more suitable for use than the imperial china; didn't he say that to you?

A. I don't remember his saying anything to me about that until after the goods crazed, then he admitted that himself, and said that it was good for nothing.

Q. My question didn't relate to that time, but referred to a period previous to that; didn't you tell him at the start that you had every confidence that the imperial china body would stand all right because you had given it a thorough test in your family?

A. I don't think I did.

Q. Do you recollect Mr. Wood telling you and Mr.

Donoher that you both knew you were deceiving the hotel men when you told them that the biscuit printed ware would answer all their purposes as well as French china?

A. No, sir.

Q. You don't recollect that?

A. No, sir.

Q. Is it or not true, as Mr. Donoher says, that the imperial china you sold for hotel use in Boston didn't give satisfaction?

A. What?

Q. The imperial china that you sold for hotel use in Boston.

A. Do you ask me if that didn't give satisfaction?

Q. Yes.

A. That is true.

Q. Did any of that craze previous to your printing it in the pottery for hotel use?

A. Yes, sir; it did.

Q. Did you not frequently say to Mr. Barlow and to Mr. Wood that that ware had a better reputation than any other made in America?

A. At first we did; we thought so because it was looked upon as being a nice, clear, clean color and very nice. The samples were very nice and everybody thought so.

Q. When you and Magowan bought out Coxons' interest in the pottery, wasn't it arranged then that Mr. Magowan was to manage the rubber works and you the pottery, and wasn't it so advertised to the trade?

A. I don't know as it was advertised particularly; my headquarters were at the pottery and his at the rubber works.

Q. Wasn't that the arrangement between you?

A. He was located at the rubber mill, and I was to have my headquarters at the pottery.

Q. And was that arrangement carried out for some time?

A. That was about the same as it always has been; my business was outside, and took me away from home a good deal.

Q. Did you at one time during the management of Wood and Barlow absent yourself on a long pleasure trip, and if so, when was that?

A. No, sir; I never did—oh, on a long pleasure trip? Oh, yes, I was off on a wedding tour.

Q. When was that?

A. October, 1883.

Q. For how long?

A. I was away two months; I didn't understand your question at first.

Q. In your absence didn't they so manage the pottery that on your return you were much pleased with what they had done, and didn't you say to them that they had done wonderfully well?

A. I don't remember about that; it might have been very pleasing to me.

Q. The question is whether you did not tell them so?

A. I don't remember that I ever did.

Q. About January 1st, 1884, after taking stock didn't you decide to commence the manufacture of ware at once, and decide to run the pottery to its full capacity all the time?

A. We wanted to do that if it could be done; yes, sir.

Q. After the hands had been told to come to work, didn't Magowan state that the orders should be countermanded, and didn't he have the factory shut down for six or eight weeks against your wish and against the judgment of Wood and Barlow?

A. No, sir.

Q. Wasn't it stopped during that time?

A. It was stopped for a period of time, because they got into trouble with the men; there was a strike about something; it wasn't our wish by any means.

Q. Was it not stopped against your wish and against the wish of Mr. Wood and Mr. Barlow?

A. No, sir; I don't think so.

Q. Did Magowan ever stop the works against your wish, and against the wish of Wood and Barlow?

A. No, sir; not against my wish.

Q. Didn't you, on several occasions, tell Mr. Wood and others that he had managed your decorating department more successfully and satisfactorily than any one else?

A. No, sir.

Q. Didn't you stop the manufacture of bone china because Mr. Magowan was taking it and giving it away?

A. No, sir.

Q. Didn't you lock it up so that he could not get at it?

A. No, sir.

Q. Didn't Mr. Wood's duties require him to be absent from the potteries at times, to buy material, &c.?

A. I don't know why.

Q. How?

A. I don't know why.

Q. Well, I asked you the question, and you say you don't know why.

A. I don't know why he should be absent.

Q. Didn't you sometimes send him to Philadelphia and New York?

A. He went to New York once or twice, I think, on some business; I have forgotten what it was; I think it was to see some shape or other, or something of that kind, like any man would occasionally go away from home.

Q. Can you tell us when the vitrified ware, you spoke about, was made, whether it was before or after the under-glazed hotel ware?

A. It was after we had commenced to manufacture the under-glazed ware.

Q. Wasn't it before?

A. I would not be positive about that; it may have been spoken of or talked of before.

Q. You said he made a kiln full of the vitrified ware. Were you not mistaken about that?

A. Bone china and under-glazed.

Q. Did you ever say to Mr. James Barlow, in his work-shop, that you wished Mr. Magowan would not come to the pottery at all, as he interfered and meddled with things that he didn't understand, and the business suffered on that account?

A. No, sir; right the reverse; I wished he would go up there more, especially when I was away.

Q. Did you not, in the summer of 1884, in your office, ask Mr. Wood if he and Barlow would be willing to buy out Magowan's interest in the pottery, saying that you

wanted to get rid of him, because he interfered too much with their management of the pottery, of which he was ignorant?

A. No, sir.

Q. Didn't you say that you were deprived of the full benefit of Wood and Barlow's knowledge and experience by Magowan's meddling and upsetting arrangements made after careful consideration between you and Wood and Barlow?

A. No, sir.

Q. Did not Mr. Wood, in the summer of 1885, ask you to release him from his agreement, saying that he had an opportunity of going into business with John Taylor, and didn't you refuse to allow him to go?

A. No, sir.

Q. Do you answer no?

A. I say I never did.

Q. I merely wanted to know what you answered?

A. Yes, sir; that was my answer.

Q. Didn't Mr. Magowan tell Messrs. Wood and Barlow, in your presence, that he had been talking to John Taylor about their going into business with him, and that Mr. Magowan had told Taylor that he didn't want to release either Wood or Barlow?

A. No, sir; not that I ever recollect of.

Q. Where did you bring these samples from that you have brought here to-day?

A. They came from Abram French & Co., of Boston.

Q. When?

A. They arrived two or three weeks ago.

Q. About two or three weeks ago?

A. Yes, sir; they came during my absence, so that I could not tell you when they arrived exactly.

By the Court:

Q. Do you know when these samples were shipped from your establishment to French & Co.

A. These goods?

Q. Yes.

A. I could not tell you at present, they were shipped in different lots.

Further-cross:

Q. His Honor's question referred to these identical goods.

A. Oh, then—well, I could not tell you.

Q. I understood you to say that you only shipped one lot.

A. We shipped a great many lots.

Q. And you don't know of which lot of under-glazed goods these were?

A. I think they were some of the first lot made; they have a quantity more of it which we expect to get back yet, of the same kind.

Q. You don't know what use this ware has been put to in Boston?

A. Only from what they said in their letters to us; I can give you that if you desire it; I can tell you what they had to say in regard to the ware.

Q. In March last, after you concluded to make a change in your management, didn't you ask Mr. Wood to leave the knowledge of his mixing with you, saying that you were well satisfied with the quality of the ware that was produced?

A. I asked him to give me the amount of stain that he used in the body, which was a very simple matter, but he refused to do it, and left us a great quantity of stuff on hand which was worthless.

Q. Didn't you say to him that as you were going to pay him his weekly salary until the expiration of his agreement, that he ought to leave the information with you?

A. I think I asked him that; yes, sir. I didn't ask for his entire information, but simply to tell me the amount of stain to be used in the mixings, which would save us a great deal of trouble and loss in coloring only.

Q. Did you, in March, 1886, ask Mr. Barlow if he knew Mr. Wood's mixings?

A. I don't remember about that; I supposed he always did.

Q. Did you not at that time contemplate continuing Mr. Barlow and the Wood mixings in your pottery?

A. We did not—not as manager of the pottery.

Q. You must have misunderstood my question. My question was if you didn't contemplate to continue Mr. Barlow and the Wood mixings?

A. Mr. Barlow as manager.

Q. Didnt you contemplate continuing Mr. Barlow in your employment, and to continue using Mr. Wood's mixings?

A. No, sir; not as manager of the pottery.

Q. Didn't Mr. Magowan tell Mr. Barlow that they had decided to pay Mr. Wood off, and you would like to make an agreement to give him charge of the pottery, with a man for the decorating shop?

A. I don't know what Mr. Magowan told him.

Q. In your presence?

A. No, sir; not in my presence.

Q. Not so far as you know, then?

A. No, sir.

Q. Didn't Mr. Magowan praise him and say he was the very man they wanted?

A. Not in my presence.

Q. And that you would continue making the same ware, and that you were satisfied with it and didn't want to change it?

A. No, sir.

Q. Didn't Mr. Barlow offer to remain with you until you could get some other person to take the management?

A. The management of the whole pottery?

Q. Yes.

A. I think he did.

Q. Did he at the same time qualify it by saying, "If you kept your printed agreement with him?"

A. I don't remember.

Q. Didn't Mr. Magowan reply, "We intend to live up to the agreement, as business men. We could not afford to do otherwise?"

A. I don't know anything about that.

Q. In your presence, I mean?

A. No, sir.

Q. Did you refuse to let Mr. Wood and Mr. Barlow go on as they had been doing before in the line of your pottery?

A. After we had virtually discharged them?

Q. Yes.

A. Yes, sir.

Q. You refused to allow them?

A. Yes, sir.

Q. Did you post notices in the shop for the men not to recognize them?

A. No sir; but we posted notices that the pottery would be run under new managers.

Q. Did they continue to report for duty as previously?

A. They occasionally came there; yes, sir.

Q. Did you tell them there was no need of their coming, as they should receive their pay just the same as if they came.

A. Yes, sir.

Q. Did you tell them not to come, as it was an annoyance to you?

A. We didn't want them around there.

Q. Did you tell them that you had nothing against them only that you had decided upon a change in the management?

A. We had decided to change the management.

Q. Did you tell them that you had nothing against them, but that you had decided to make a change in the management?

A. We felt that they were not competent to run our potteries successfully with profit to us; that was our complaint.

Q. Made against them?

A. Yes, sir; personally, I think.

Q. Didn't you continue to make payment of their weekly pay to the time of the expiration of the agreement?

A. I think it was continued; I did not have charge of that part of the business, but I don't think we owe them anything now for salary.

Q. You are in the habit of issuing circulars to the trade, are you not?

A. I know about circulars, that is, I know something about them, I believe; I don't know about all of them that go out.

Q. You know that they were issued from time to time?

A. Yes, sir; but I don't know the contents of the circulars. We write a good many circular letters.

Q. I have two or three which I now submit to you. Look at them and see if they are circulars such as you issued at

different times during the management of Wood and Barlow. I produce three of them to you.

A. Yes, sir; that is one, and this is one, and that is one.

At this point the agreement heretofore offered in evidence was marked as *Exh bit No. 3;* and the circulars last above referred to were marked *Exhibits Nos. 4, 5* and *6*, respectively, *ex parte* complainants.

Re-direct:

Q. Did you ever have anything to do with the selection of the bodies for the manufacture of the ware—materials for the body?

A. No, sir.

Q. Did you ever in any way interfere with Mr. Wood in the selection of the materials for the body?

A. No, sir.

Q. Or the mixing of the body, or under-glazing, or decoration?

A. No, sir.

Q. You never did?

A. No, sir.

Q. Didn't Mr. Wood make the selection of the materials himself?

A. Everything; yes, sir.

Q. Didn't he superintend the mixing?

A. Yes, sir.

Q. Didn't he select the body that was used for the purpose of the under-glazed printing?

A. Yes, sir.

Q. Wasn't it his own proposition?

A. Yes, sir.

Q. From himself personally?

A. Yes, sir.

Q. Did you ever have any arrangement of any kind with Messrs. Wood and Barlow, independent of Mr. Magowan?

A. No, sir.

Q. What were your relations with Mr. Magowan, all the way through, during the time Wood and Barlow were there?

A. Do you mean in the pottery?

Q. Yes; were they perfectly harmonious?

A. Yes, sir.

Q. And they have been at all times?

A. Yes, sir; always since we have been together.

Q. Did you ever confer with Wood and Barlow, without the concurrence of Mr. Magowan, relating to the management of the pottery?

A. No, sir.

Q. Did you ever say anything to them in relation to that?

A. No, sir; I would always confer with Mr. Magowan first.

Ewing C. Mulford, a witness having been heretofore sworn, is recalled for further examination.

Direct examination (by Mr. Vroom):

Q. You stated you were the book-keeper, I believe?

A. Yes, sir.

Q. And that you were in the employ of the Empire Pottery Co.?

A. Alpaugh & Magowan; yes, sir.

Q. And have been there since 1883?

A. Yes, sir.

Q. During all that period have you had charge of the books?

A. Yes, sir.

Q. And made the entries?

A. Yes, sir.

Q. Yourself?

A. Yes, sir.

Q. Have you got with you your journal?

A. Yes, sir.

Q. What do you use the journal for?

A. I use the journal for explaining some transfer entries, and making the final report of the year's business.

Q. Does the journal contain a report of each year's business?

A. It does.

Q. Of the pottery?

A. It does.

Q. Either at intervals of six months or eighteen months?

A. Yes, sir.

Q. Sometimes varying?

A. Yes, sir.

Q. Turn to the journal showing the business at the close of 1883.

A. Yes, sir.

Q. December 31st, 1883.

A. Yes, sir.

Q. For the seven months from the time of the employment of Messrs Wood and Barlow?

A. Yes, sir.

Q. What is it?

A. Merchandise account to profit and loss; the balance of this account at the close of the year was $58,773.33; add stock on hand as per inventory, $68,276.46; add it up together and it makes $127,049.79. The other side of the account is profit and loss to sundries; material account, $29,551.14; wages, $61,667.80; salaries, $9,601.38; expense account, $12,236.51; interest and discount, $7,960.94; suspense account, $3,108.88; total, $124,126.65.

Q. Now, that shows a loss in the business of those seven months, of the difference between those two accounts, does it not?

A. It shows a balance of $3,000 in favor of the business.

Q. Oh, yes; $2,923.14?

A. Yes, sir.

Q. Now, will you turn to the next account after December 31st, 1883—July 1st, 1884? What does that show, profit or loss?

A. Loss, sir.

Q. And what are the totals?

A. The merchandise account credit to profit and loss is $87,865.44; the total amount of the other side is $103,149.03, which shows a loss of $15,283.59.

Q. Now, from July 1st, 1884, to the 1st of January, 1886?

A. Yes, sir.

Q. Well, does that show a profit or a loss?

A. That shows a loss.

Q. Read it?

A. Merchandise account debit profit and loss credit, $291,120.38.

Q. Now, profit and loss to sundries?

A. Profit and loss debit, $320,933.88.

By Mr. Vroom—That shows a loss of $29,813.50.

Q. Those entries were obtained where?

A. The merchandise entries were obtained from the ledger; the stock is taken from the stock book; the interest, discount, labor and material accounts were taken from the ledger in the same way.

Q. Is it written up to the first of January, 1887?

A. No, sir.

By Mr. Vroom—I offer the journal, containing these items, in evidence.

By Mr. Aitkin—Of course, that will be taken subject to our objection.

Q. Did you keep the book called the return book, in which are entered the returns made of ware?

A. Yes, sir; or, at least, I had it kept.

Q. You had it kept under your supervision?

A. Yes, sir.

Q. Will you look at that book?

A. Yes, sir; we call it the receiving book.

Q. When was this started?

A. It begins April, 1884.

Q. And was opened by you for what purpose?

A. To keep a record of all goods that were returned for different causes, so as to have a reference that we could turn to at any time.

Q. Have you examined that book lately?

A. Yes, sir.

Q. For the purpose of taking out from the items certain goods, or goods of a certain quality that were returned?

A. Yes, sir.

Q. For the purpose of facilitating this inquiry I will just show the witness a list of goods returned on account of crazing. Will you just look at that; is that made from that book by you?

A. Yes, sir; it was made from this book by myself.

Q. Of what kind of ware?

A. Elberon decorated goods and Saratoga.

Q. Is that the under-glazed?

A. Yes, sir.

Q. Made during the time, of course, that Mr. Wood and Mr. Barlow were in charge?

A. Yes, sir.

Q. That is only in those two kinds of goods?

A. Yes, sir; this was all under-glazed goods.

Q. In what shape was this (referring to one of the pieces of crockery already offered in evidence)?

A. Elberon.

Q. Have you a piece of Saratoga here?

A. No, sir.

Q. That would include what Abram French & Co. returned?

A. Yes, sir.

Q. What does that statement foot up there?

A. $10,822.20.

Q. You didn't put the date on that account, did you?

A. There is a date to show where it begins in April, and it runs up to the last entry.

Q. I mean you didn't date each one of those?

A. I cannot give you the date of each one of those returns.

Q. You cannot?

A. No, sir.

Q. Why not?

A. Because the young man who I had doing this would omit the dates; the goods would come in one day and they would not be entered up for several days.

Q. That don't include all the goods that were returned?

A. No, sir.

Q. What other goods are stated there?

A. There are goods here of different decorations.

By Mr. Vroom—The list doesn't include all; the witness understood me to only want those two decorations, so that he didn't include everything in his list.

Q. What else was there?

A. Apple blossoms and the Brunswick shape; there is quite a quantity of them.

Q. Any imperial china?

A. It is all imperial china.

Q. That is, it was all stamped like the imperial china was stamped?

A. Yes, sir.

Q. And warranted?

A. Yes, sir.

Q. Have you anywhere estimated the entire amount of goods returned between April, 1884, to the end of Mr. Wood's term there; have you ever summed it up?

A. No, sir.

Q. How long would it take to do it?

A. A week.

Q. Now, what was the practice when goods were returned on account of crazing; what would be done with them?

A. When goods were returned on that account we would allow the customer the value of them.

Q. What would you do with the goods?

A. The goods were set on one side and disposed of as fast as we could.

Q. Would you re-fire them sometimes?

A. In one case only that I recollect of were they re-fired.

Q. And what was that?

A. That was the case of French & Company.

Q. You did re-fire some of those goods?

A. Yes, sir.

Q. But the usual course was to dispose of them as fast as you could?

A. Yes, sir.

Q. What would the goods bring when sold by you after they had been returned in this way?

A. They would sell generally for the price of white thirds.

Q. Which would be what?

A. From 75 to 80 per cent. off the list.

Q. Then they would be worth about how much?

A. 10 to 15 cents on the dollar.

Q. The balance would be a total loss, would it?

A. Yes, sir.

By Mr. Vroom—I will offer that book, if the Court please—the return book.

At this point the journal was marked *Exhibit D 7* for the defendants, and the receipt or return book *Exhibit D 8* for the defendants.

Q. Did you have anything to do with the management or conduct of the pottery?

A. No, sir.

Q. Were you not at one time requested by Mr. Magowan to look after the accounting at the kilns?

A. Yes, sir.

Q. When was that?

A. I could not give you the exact date, but quite some time after I had been there.

Q. Was Mr. Wood at that time employed?

A. Yes, sir.

Q. He was at that time employed?

A. Yes, sir.

Q. What did you do?

A. I went out and counted the kilns.

Q. Did you count every kiln?

A. No, sir; not every one.

Q. You would count two and omit one?

A. Yes, sir.

Q. Did you keep a record of it?

A. Not until I was requested to do so by the firm.

Q. And that was after the orders were issued that that should be done?

A. Yes, sir.

Q. And you kept a memorandum, which you destroyed, I understand?

A. Yes, sir; the memorandum was afterwards destroyed.

Q. No books were kept of that at all?

A. No, sir.

Q. Why were you requested to count the kilns?

A. I was requested by the firm to count the kilns so that they would have a record of the kilns kept by some one in the office.

Q. What was the proportion of thirds at the time you first went out there, and what was the manner of the filling of the kilns on the part of Mr. Wood?

A. The proportion of thirds to a kiln previous to counting them was very great; after the record was kept there was an improvement.

Q. That depended also upon the filling of the kilns, did it?

A. Yes, sir.

Q. The quantity of the ware?

A. The quantity of the ware coming out; yes, sir.

Q. Then you kept up the counting of the kilns regular, from the time of that regularly in December, 1885?

A. Yes, sir.

Q. And from that time until Mr. Wood left?

A. Yes, sir.

Q. And that is still continued?

A. Yes, sir.

Q. Did you discover any glossed ware hidden away after Wood and Barlow left there—imperfect ware?

A. After Mr. Wood and Mr. Barlow had left, and Mr. Young took hold, there was discovered in the glossed kiln sheds, under the benches, a place full of it. I don't recollect how much there was of it, but it was composed principally of large dishes—large square dishes.

Q. Were they broken?

A. They were not broken, but they were damaged by being, I supposed, badly fired or nicked, or something of that kind.

Q. What quantity was there?

A. I could not tell you as to the exact quantity, but there was considerable of it.

Q. Mr. Mulford, were you acquainted with Mr. Gruesser?

A. Yes, sir.

Q. Do you remember the fact of his being the superintendent of your warehouse department there?

A. Yes, sir.

Q. Did you assist him in making the selection of ware there when he first took charge?

A. Yes, sir.

Q. Do you remember his setting aside some ware?

A. Yes, sir.

Q. What was his object in doing that?

A. His object was to report it as being bad ware.

Q. Did you find much of that?

A. We found considerable.

Q. Do you remember how much?

A. No, sir.

Q. You don't remember how much?

A. I don't think there was ever any account made of it.

Q. I asked that question particularly to know whether you did keep a list of that ware?

A. No, sir; the only list of that ware that was turned into the office as an actual account, was what was turned in as seconds and thirds, and that came out of the kiln in the early records.

Q. There is no record of that now?

A. No, sir.

Q. That was sold, wasn't it?

A. Yes, sir.

Q. Did you have anything to do with the sale of it?

A. No, sir; not that particular lot.

Q. I requested you to make a statement from the books. Mr. Gummere promised that it should be produced here, and it was referred to in Mr. Magowan's testimony. Taking the labor for six months in 1885, July to January, the amount paid out, and the labor of the six months in 1886, July to January, 1887.

By Mr. Aitkin—Haven't you the pay-rolls?

By Mr. Vroom—These are taken from the original books, which we will produce if you require it. Mr. Gummere said we would present you an actual statement from the books of a comparison for six months. Now, it will require all the books to take it directly from them.

By Mr. Aitkin—Will not one single book show that?

By the Witness—No, sir; it will not.

By Mr. Vroom—I will read the statement right off. [Reading] "Labor, six months 1885, that is, from July to January, 1886, $62,207.50; labor, in six months, July, 1886, to January, 1887, amount paid out, $74,964.63." There is an increase of 20 per cent. "Sales, in 1885, during the same six

months, $125,177. In 1886, during the same period, $169,082, an increase of 33⅓ per cent." I would not have brought this in had it not been that Mr. Magowan made this a part of his testimony, and Mr. Gummere had said we would produce the books upon that subject. Now, I offer it subject to any exception you may desire to make; and, if you want to call for the production of the books, you may do so.

By Mr. Aitkin—I object to the statement. The same was marked *Exhibit D 9* for defendants.

Cross-examined (by Mr. Aitkin):

Q. Do I understand you to say that you made no memorandum of the account of the defective decorated ware that you and Mr. Gruesser found?

A. I don't think I answered that question at all.

Q. I understand that was what Mr. Vroom had reference to. Did you make an account of the damaged decorated ware in the warehouse, in January, 1886?

A. We made a memorandum at one time, the date I don't know, of damaged Elberon and various other kinds of goods, for the purpose of trying to make a sale of them, but that memorandum never went in the office.

Q. What became of it?

A. It was destroyed.

Q. Why?

A. Because it was of no use after the sale.

Q. Do you know what the amount of damaged ware was?

A. No, sir; I could not say at the present time.

Q. Wasn't it between $8,000 and $9,000?

A. I could not say, sir.

Q. You haven't any idea, have you?

A. I haven't any at the present moment.

Q. And you have no record of it?

A. No, sir.

Q. And you don't know what they sold for?

A. They were finally sold, I know, but not as we expected selling them at the time we made the memorandum.

Q. They were not sold that way?

A. No, sir.

Q. Did you ever keep any account—in December, 1885, you say you were detailed to count the ware coming from the kilns, were you?

A. Yes, sir.

Q. And I understand you have no memorandum of that?

A. We have a memorandum of the account of the kilns, from December 4th, I think it is, 1885.

Q. But you never kept any account of the drawing of the kilns for that time?

A. Not as a record.

Q. Have you any memorandum of any account as to what the kilns produced?

A. No, sir.

Q. Will you say those memoranda have been destroyed?

A. They have been destroyed.

Q. What did you do with them after you made them?

A. They were brought into the office and laid around; we attached no value to them at all, and they finally disappeared in the waste-basket.

Q. Do you recollect, while you were counting at one time, that Mr. Wood told you you were not counting them all, and that you ought to count them right?

A. I don't recollect anything of the kind.

Q. Didn't he tell you that you didn't know how to count them?

A. I don't recollect that.

Q. Who helped you count them?

A. Mr. Wood and Mr. Barlow.

Q. They both helped you?

A. At first; yes, sir; and for quite a long while.

Q. Well, for how long?

A. I suppose probably for two or three months.

Q. Well, that is all the time they were there, after you commenced counting?

A. They were there from May to December, along in December before we kept the record.

Q. Then, when you kept this record, you commenced it in December, 1885?

A. Yes, sir.

Q. They left in March, 1886?

A. Yes, sir.

Q. Then, how long did you keep this record, while they were there?

A. Between those dates.

Q. Well, how many months?

A. December to March.

Q. Yes, exactly; and you were wrong just now when you said about eight months, were you not?

A. No, sir; I didn't say so.

By the Court—He said two to three months.

Q. Then I misunderstood you, or I would not have asked that last question. It may be stricken out from the record.

By the Court—Yes, that may be done.

Q. Just turn to that book, if you please—*Exhibit No. 7*, the journal. Turn to the first account. Now, what does that merchandise refer to, the first item?

A. Merchandise refers to the sale of all goods.

Q. The gross sales?

A. The gross sales of all goods; yes, sir.

Q. That is the amount of sales?

A. This is not the gross amount; this is the balance of the merchandise account in all cases; there is two sides to it, and this is the balance of the credit on merchandise account at the end of the year.

Q. That is at the first of July?

A. Yes, sir.

Q. You mean, then, that you had that amount of goods sold, do you, on your books?

A. No, sir; I mean to say that during the year we credited each month's sales to the credit of merchandise account, and that shows the gross amount of sales, and when there were any returned goods or any credits to make to the customers it was put against that amount, and the difference makes the net sales; now, this is the net balance of the account up to that date.

Q. This is the net balance then?

A. Yes, sir.

Q. What is the other?

A. This is the stock we had on hand as per inventory.

Q. Where is that inventory?

A. At the office.

Q. You have them?

A. Yes, sir.

Q. I would like to have those produced, the inventory taken then and subsequently. You can produce them, can you not?

A. Yes, sir.

Q. Now, on the other side, what is there—what is the first item-material?

A. Material account is an account that we keep to which we charge all the material that we buy.

Q. It is part of the expense account?

A. No, sir; it is not part of the expense account; it is the material account, that is, the stuff we buy that goes into the goods that we make.

Q. Less what you have on hand?

A. Yes, sir.

Q. Now, the labor account is what?

A. The labor account is what we paid out during the six months for labor.

Q. What is the expense account?

A. That takes in all the items of expense in running the factory.

Q. What are they?

A. Traveling expenses, getting goods in, office expense, stationery and things of that kind.

Q. Did Messrs. Alpaugh & Magowan draw any money out of the concern which is included in there?

A. Yes, sir; there is a portion of the labor or expense; I don't know whether it is charged in labor or expense account, but in one or the other there is a charge against that account to their credit.

Q. Did they draw a salary?

A. Yes, sir.

Q. Now, that is what I want to get at. There is an item of salary included to each one of them?

A. Yes, sir.

Q. How much?

A. $250 a month.

Q. Each of them?

A. Yes, sir.

Q. It also includes the interest allowed them, is that so?

A. Yes, sir; (indicating) that is part of it.

Q. Now, that was interest on their investment?

A. Yes, sir.

Q. And that includes how much pay to Messrs. Alpaugh & Magowan during this time?

A. This (indicating) is interest.

Q. Well, the whole amount?

A. $1,500.

Q. Now, the salaries?

A. $3,000 per year.

Q. $6,000 altogether?

A. For the year.

Q. For six months?

A. No, sir; that is the entire item.

Q. But this is only made up for six months?

A. Yes, sir.

Q. And that includes $6,000 paid them?

A. It includes the salaries and interest.

It is admitted that the signature of the witness attesting the execution of the agreements produced by the defendants' counsel, is the genuine and correct signature of Mr. Cook, as it purports to be.

Recess.

Archibald M. Maddock, a witness produced on the part of the defendants, having been duly sworn according to law, deposeth and saith:

Direct examination (by Mr. Vroom):

Q. You live in Trenton?

A. Yes, sir.

Q. What is your business?

A. Pottery business.

Q. Are you a member of the firm of Thomas Maddock & Co.?

A. Yes, sir.

Q. You have a pottery here?

A. Yes, sir; on Carroll and Ogden streets, Trenton.

Q. How long have you been connected with that pottery?

A. I have been in the firm five or six years.

Q. Are you acquainted with the different kinds of ware manufactured by the potteries in this country?

A. Yes, sir; somewhat familiar.

Q. Do you make in your pottery underglazed ware printed on the biscuit?

A. Yes, sir.

Q. How long have you made it?

A. About eight years, to my knowledge.

Q. Have you carried on that branch of the business successfully?

A. Yes, sir.

Q. Are you acquainted with the methods of making underglazed printed ware—decorated ware?

A. Yes, sir.

Q. Practically?

A. Yes, sir.

Q. Have you carried it on successfully or otherwise?

A. I believe we have; we consider that we have.

Q. In the making of the decorated ware upon the biscuit, does it make any difference as to the body?

A. My experience has not been such; we have put it upon several different bodies.

Q. What might be termed the richness of the body would have no effect upon the success of the ware?

A. I should say not.

Q. What is the secret of success in making the underglazed decorated ware?

A. I don't think I ought to say that.

Q. I don't want to ask what your secret is, but is it in the body or is it in the glaze?

A. Well, I should say the trouble is with the glaze.

Q. And not with the body?

A. No, sir.

Q. Do not they print upon all kinds of bodies; I mean the potters generally?

A. Yes; that has been my experience.

Q. You have been in England through the potteries there?

A. Yes, sir.

Q. Do they not print upon all kinds of bodies there, from the cheapest to the most expensive?

A. I have seen several grades there.

Q. And in your own experience that has been the same result that you have reached?

A. About the same, yes; as near as I can tell.

Q. Do you know anything of the wages paid to the superintendents of potteries?

A. No; I could not say.

Q. I mean of your own knowledge?

A. I could merely tell from hearsay.

Q. You have no superintendent there for your business?

A. No, sir.

Cross-examined (by Mr. Aitkin):

Q. Do you have any crazed ware in your shop?

A. Yes, sir.

Q. All ware some time or other crazes more or less, does it not?

A. I would not say all of it, but some of it.

Q. Most all?

A. Some of it crazes and some doesn't; I don't think there is any manufacturer in existence that makes earthenware that doesn't have more or less of it, either in England or in this country.

Q. In the selection of seconds and thirds does it not depend very much upon the selector himself as to the quantity of each grade coming out of the kiln?

A. Well, I suppose it does; yes, sir.

Q. One selector would make a closer selection than another?

A. Yes, sir; I suppose that is so.

Q. Have you ever known of thirds being re-selected and pretty good ware gotten out of what had been classed as thirds?

A. I don't think I am in a position to answer that question.

Q. What is your position in your pottery?

A. The general management has been my branch of the business.

Q. (By the Court)—Is there any standard in the market by which you can determine which are seconds and which are thirds?

A. No, sir; and I don't see how they are going to get any standard.

Q. (Further cross)—Then, you might in your ware have one standard, and the Empire Pottery Company another, and some other pottery another?

A. Yes, sir.

Q. And there might be as many standards for seconds and thirds as there are potteries in Trenton?

A. Yes, sir; some will get more seconds and thirds than others will; it all depends upon the man's judgment. I don't see how it can be equalized either.

Q. Do you print on a body that has clay in it—ball clay?

A. Yes, sir.

Q. What other kinds are there—ball clay is common clay, is it not?

A. Well, it is more common than the china clay; yes, sir.

Q. (Re-direct)—When you speak of seconds and thirds and there being no standard, you mean that they are defective to a certain degree?

A. Yes, sir.

Q. And all ware that is not perfect is seconds and thirds?

A. Yes, sir.

Q. I don't understand that there is any difference between potteries in making discrimination between what is perfect and what is seconds and thirds in their ware?

A. They try to keep as near as they can to each other, but I don't see how it can possibly be equalized.

Q. But where it is defective it is defective.

A. Yes, sir.

Q. And the difference between seconds and thirds is as to their degree of badness?

A. Yes, sir.

Q. There is no trouble about selecting and distinguishing what is perfect ware?

A. No, sir.

Q. Then it is a question as to the degree of badness that the manufacturers differ in?

A. Yes, sir; some would select closer than others.

Q. But as to the perfect ware, there is no difficulty about that?

A. No, sir.

Q. (By the Court)—You have just observed that some would select closer than others; I understand you to mean by that, that some would have a greater number of articles classed as perfect than others?

A. They might have a better selector than another firm.

Q. Well, you mean they would select them closer?

A. Yes, sir; they might select them closer.

Q. (Further cross)—In your experience, how many pieces of perfect ware comparatively come out of a kiln without any blemish at all upon it?

A. That is a difficult question to answer; I could not even approximate it, how many pieces there would be perfect from a kiln.

Q. Well, personally, I mean?

A. Well, we have run it along for about ten per cent.

Q. (By the Court)—Ten per cent. of imperfect ware?

A. Yes, sir; but we ought not to be classed with others, because we manufacture principally sanitary earthenware, and that is not selected like table ware; the selections are very different, therefore we ought not to be taken as an example for them.

Q. (Further cross)—Pieces of ware coming out of a kiln without a blemish are very scarce, are they not?

A. Well, entirely without blemish, yes, because you can pick a blemish in most any ware.

Q. And to find it without blemish at all, is very rare?

A. Yes, sir; you can most always find a blemish upon it.

Q. And it is the amount of blemish that distinguishes between firsts, seconds and thirds?

A. Yes, sir.

Q. According to the judgment of the selector?

A. Yes, sir; I don't care what it is, you can always find something the matter with it, and so you can with anything

almost; I don't care how perfect an article is, you can certainly pick out some slight blemish in it.

Q. (Re-direct)—The question as to the standard, then, is on the salable quality of the article, is it not?

A. I don't know that I exactly understand you.

Q. The salable quality of the article would fix whether it was second or third?

A. Yes, sir; that would have a good deal to do with it.

Q. For instance, where it was crazed, where would you place that?

A. With us, we throw it away.

Q. Then it would be worse than thirds?

A. If it were crazed; yes, sir; we would break it up.

Q. Then there can be no difficulty about the standard on that point?

A. No, sir.

Q. You would throw it away?

A. Yes, sir.

Q. (Further cross)—Do potteries generally throw it away?

A. I don't believe they do; some of them don't, I know, but we throw away what we have.

Q. You place your reputation a little higher than the rest of them?

A. I don't think we place it any higher than others ought to place theirs.

Q. Do you confine yourself to sanitary ware exclusively?

A. Sanitary ware and toilet ware.

Q. And that requires a high state of manufacture—the best state of manufacture?

A. No, not the finest state of manufacture; it is not as fine a grade of goods as table ware, and the material which is used in its manufacture is not as fine.

Q. (By the Court)—Speaking of crazed ware, look at this piece marked *Exhibit D 10*—does that exhibit the characteristic of crazing to which you refer?

A. Yes, sir.

Ewing C. Mulford, a witness heretofore sworn on the part of the defendants, is recalled for further cross-examination.

By Mr. Aitkin:

A. Ten and sometimes forty off the list.

Q. Well, on a general average forty?

A. Yes, sir; at that time it would, yes.

Q. Is this cash value?

A. No, sir; that is gross value.

Q. (By the Court)—You say this is gross value; do you mean that the outside column is the gross?

A. Yes, sir; this is the gross, and that (indicating) is the quantity.

Q. Then the outside column on page 117 expresses the gross value?

A. Yes, sir; the cash value is not given, of course.

Q. (Further-cross)—That would depend upon the amount of sales and the discount taken off. Is there any discount taken off of this inventory?

A. No, sir.

Q. (By the Court)—Is that so with the outside column of everyone of the pages of that inventory?

A. Yes, sir.

Q. (Further cross)—Now, how did you get at the price on that inventory?

A. We took this as the stock on hand.

Q. Is it done anywhere?

A. Yes, sir; we took this amount here (indicating).

Q. (By the Court)—You mean that you took this amount from the book marked *D 11* on page 113?

A. Yes, sir; and divided it up in this way (witness produced a paper illustrating his meaning), according to the statement which I now hold in my hands. We took this item for instances, C. C. ware. The gross amount is $955.51 gross; from that we took off the discount and that brings it down to the net figure. There are two sets of figures used; there you see 335263, 335263, and 55 and 75 off leaves that net from page 87. These were figures we used in determining the price. This is the amount we say we can realize for the goods.

Q. Are you through?

A. This is a recapitulation of all this stock. Then we go over and make another one; the only difference between them is this, that this is taken lower than that is.

Q. This is all done by the clerks?

A. No, sir; that is done by myself.

Q. You did all these?

A. Yes, sir.

Q. By yourself?

A. Yes, sir.

Q. Is this recapitulation entered into this journal book?

A. Yes, sir.

Q. That is the way your journal book is made up?

A. Yes, sir.

Q. (Referring to another book)—Now, where is the one for this?

A. $59,256.17.

Q. Did you include in those inventories the stock, horses, mules, wagons and implements?

A. No, sir.

Q. You never included those?

A. No, sir.

Q. What do you call those, part of the capital?

A. Well, we would call those a part of the pottery.

Q. Are they not bought and paid for out of the proceeds of the concern?

A. Sometimes they are.

Q. How else would they be paid for?

A. Before these parties took hold they were there, and what was put there afterwards were to take the place of the others; they were to take the place of those that had been worn out or used up.

Q. And the stock was kept up then from the profits of the concern?

A. Yes, sir.

Q. And included in the annual expense?

A. Yes, sir.

By Mr. Aitkin—That is as far as I can go at present. I shall have to study over these books in order to make my examination complete; and I should like to have an account of the monthly sales, if Mr. Vroom will have them made out and sent to me.

By the witness—We can give you the monthly sales and the gross amount.

By Mr. Aitkin—That is what I want. I don't mean for you to itemize them all.

By Mr. Vroom—The witness will do that for you, certainly.

Q. You will give us the gross amount of the sales for each six months from the time Messrs. Wood and Barlow were there? That will answer by purpose.

By Mr. Vroom—All right.

Q. Did you take off a different discount than you had done previously, during the time the Coxons were there, from the annual accounts?

A. I could not answer that question, because I was not there when the Coxons were there.

Q. Do you know as to that, from anything that you have seen?

A. No, sir; I do not.

Q. Mr. Mulford, did you ever hear Mr. Alpaugh complaining that Mr. Magowan interfered with the management of the pottery?

A. No, sir.

Q. Do you know that last March that your firm expected Mr. Barlow to assume the management, in Mr. Wood's place, in the pottery?

A. No, sir.

Q. Do you know that they negotiated with him for that purpose?

A. No, sir.

Q. Can you tell us the time on which they were discharged from the pottery?

A. No, sir.

Q. Cannot you tell that?

A. No, sir.

Q. Were you ordered to continue to credit up their weekly salary after they left?

A. No, sir.

Q. Don't you know it was paid to them up to July?

A. Yes, sir.

Q. Did you make up a statement of that salary account, up to July?

A. I made a statement of their salary account, but I don't know how far it extended.

Q. Did you ever credit Mr. Wood and Mr. Barlow, or either of them, with any part of the profits of the concern?

A. No, sir.

Q. Did you ever make an entry on the books of the concern with regard to that?

A. Yes, sir.

Q. When?

A. June, 1884.

Q. (By the Court)—What is that entry?

A. Profit and loss debit to sundries, William Wood credit towards profits, $2,000; James Barlow ditto, $2,000.

Q. When did you make that?

A. In June, 1884.

Q. Are you sure you made it in June?

A. Yes, sir.

Q. How did you come to make that?

A. By direction of the firm.

Q. Who was present?

A. There was no one present when I made the entry.

Q. Who was present when you were directed to do it?

A. Mr. Magowan.

Q. Was Mr. Wood or Mr. Barlow present on either occasion?

A. No, sir.

Q. Did you ever see them about it?

A. No, sir.

Q. What did Mr. Magowan tell you to do in regard to that matter?

A. Well, I don't now just recollect what the very words were; he simply told me to make such an entry.

Q. And you made it in accordance with that?

A. Yes, sir.

Q. Did you make any other entry at any other time?

A. Yes, sir; I think there was an entry made, but I am not positive at all; I will look [witness looked]; there is another entry in August, 1885.

Q. What have you there then?

A. The same as the previous entry.

Q. Exactly the same?

A. Yes, sir.

Q. How did you come to make that?

A. By the same direction.

Q. Haven't Mr. Wood and Mr. Barlow both applied at your office wanting payment of their profits, or their guaranteed profits?

A. They never made any such claim on me.

Q. Is that all Mr. Magowan told you to do in connection with the matter—what you have entered there?

A. Yes, sir.

Q. Did he tell you to give them a statement to that effect?

A. No, sir.

Q. Did you give them anything to show for it?

A. Not that I know of; I have no recollection of doing anything of the kind.

Q. Do you recollect seeing Barlow and Wood in connection with it?

A. I have seen them every day, but nothing in connection with this thing more than Mr. Wood came to me on one occasion and asked me if it had been done.

Q. That is all you recollect about it?

A. Yes, sir.

Q. (By the Court)—After it had been done did he ask you?

A. I don't recollect whether it was after it had been, but I think he did.

Q. (Handing witness a paper)—Is that in your handwriting?

A. Yes, sir.

Q. Is that statement made by you?

A. Yes, sir.

Q. Who did you give that to?

A. I presume I gave it to Mr. Wood; it has his name on it.

The said paper was then offered in evidence and marked *Exhibit C 8* for identification.

Q. (Handing witness another paper)—Is that another one given subsequently?

A. Yes, sir.

Q. You gave this to Mr. Wood?

A. Yes, sir.

Q. By direction of Mr. Magowan?

A. No, sir.

Q. How then?

A. On my own responsibility.

Q. How did you come to do that?

A. By their requesting it.

Q. You recollect that now?

A. Oh, I recollect that; yes, sir.

Q. Did you give Mr. Barlow a statement of the same kind?

A. I could not say, sir, unless I am shown evidence of it.

Q. (Handing witness a paper)—Look at that.

A. Yes, sir; these are the same thing.

Q. (By the Court)—Did you give Mr. Barlow two similar papers?

A. Yes, sir.

By Mr. Aitkin—I will offer these three last-mentioned papers in evidence.

The same were marked in their order *Exhibits 9*, *10* and *11*, respectively.

Re-direct:

Q. These statements that were made out were made after the entries were put in the book there towards profits, which were put in the book by direction of Mr. Magowan?

A. Yes, sir.

Q. There was no profits put in the statement which you show in the book at all?

A. No, sir.

Q. And the only reason for your entering them was because you had been directed by Mr. Magowan to enter them in that way towards?

A. Yes, sir.

Q. And there was no profit at any time subsequent—[interrupted].

Objected to.

By Mr. Vroom—I have one more witness, Mr. Brewer, who is on his way here, and it won't take me five minutes to examine him. I desire to reserve liberty to call him when he comes in on the question of salary only; then the complainants can go on with their case.

There being no objection to this suggestion, it was so ordered.

Defendants rest, with the exception as above stated.

William Wood, one of the complainants herein, having been duly sworn according to law, deposeth and saith:

Direct examination (by Mr. Aitkin):

Q. You have lived in Trenton how long?

A. A little over seventeen years.

Q. How long have you been connected with the pottery business?

A Seventeen years in Trenton, and all my life here and in England.

Q. How old are you?

A. Forty-five.

Q. What experience have you had as foreman or manager in the manufacture of pottery?

A. In England and in this country I have had a little over twenty years' experience.

Q Do you consider yourself a practical manufacturer of pottery?

A. I consider myself a practical manufacturer of pottery; yes, sir.

Q. Where were you at work in May, 1883?

A. Part of May I was at work in the East Trenton Pottery, and in the latter part of May for Alpaugh & Magowan.

Q. In what capacity were you at the Trenton Pottery?

A. Manager.

Q. That is C. S. Cook & Co.?

A. Yes, sir.

Q. You executed an agreement with Alpaugh & Magowan to become superintendent of their pottery?

A. Yes, sir.

Q. Who made the first advance preliminary to the making of that contract?

A. Mr. Magowan. The first time I ever saw him was one dark night, I think, between the 1st and 3d of May. He drove up to my house, two miles out of town in the country, and introduced himself by saying he was Mr. Magowan, of Coxon and Company's pottery. That was the first time I remember seeing him to speak to him.

At this point, Mr. Brewer arriving, Mr. Wood was withdrawn.

Albert Brewer, a witness produced on the part of the aforesaid defendants, having been duly sworn according to law, deposeth and saith:

Direct examination (by Mr. Vroom):

Q. You live in Trenton?

A. Yes, sir.

Q. And you are connected with what pottery?

A. Ott & Brewer.

Q. That is a large pottery, is it not?

A. Yes, sir.

Q. One of the largest potteries in Trenton?

A. Yes, sir.

Q. Are you acquainted with the salaries paid to foremen or superintendents of potteries in this city?

A. Well, I am acquainted with the salaries paid people in our place—Ott & Brewer's place and one or two others.

Q. You have a general knowledge, being in the pottery business, of what is paid?

A. Yes, sir.

Q. What is the sum paid per month or week?

A. For what?

Q. For the services of a superintendent or foreman of a pottery?

A. For a foreman in the kilns, I suppose you mean?

Q. Yes.

A. A foreman of the kilns and mixing?

Q. Yes.

A. Well, I consider about—[Interrupted].

By Mr. Aitkin—I object to what the witness considers.

Q. State what you know, of course.

A. I understand your question to be, what the general salary is for a person filling those positions?

Q. Yes.

A. Well, I cannot state, in one round sum, just what they are all paid.

By the Court—I think the rule adopted by the Chief Justice, limiting the inquiry as what such services are worth, should be adopted.

Q. Well, answer that question, if you know.

A. I consider $2,000 per year a fair remuneration.

Q. For what?

A. As superintendent of the kilns and mixing-room of the pottery; that is what I understood your question to be.

Q. Now, you have answered that $2,000 is the sum, and I will ask you whether you base that upon your knowledge of what services of that kind are worth in a pottery of the size of the one you are connected with?

A. Yes, sir.

Q. How many kilns have you?

A. We have six kilns.

Q. Is yours one of the largest potteries in the city of Trenton?

A. Yes, sir.

Q. And one of the greatest capacity?

A. Yes, sir.

Cross-examined (by Mr. Aitkin):

Q. What would you expect such a superintendent to do?

A. To see that the mixings were properly made, whether he did it himself or supervised it; I should expect him to be responsible for the kilns, for the management of the kiln hands, and to undertake the superintendency of everything from the ware-room to the raw material.

Q. Anything else?

A. No, sir.

Q. And to receive directions from whom?

A. To be second only to the proprietor.

Q. And to be subject to him?

A. Subject to the proprietors, unless there was some other understanding between them.

Q. Who would buy the raw materials?

A. That would be a matter for arrangement, but that would be a simple matter; he might designate the materials, the quantity, and let somebody else buy them, but he would be held responsible.

Q. Has your pottery such a superintendent?

A. We have a superintendent over that section.

Q. Over the one section?

A. For that one section which I have described.

Q. But not a general one?

A. We have no general superintendent.

Q. You have how many superintendents?

A. We have a foreman in the capacity I have just mentioned, and we have a foreman over the clay hands, and we have another in the decorating department.

Q. Do you have charge of the decorating department?

A. Yes, sir.

Q. What salary do you get?

A. Is that a question that I am obliged to answer?

Q. Well, what salary do they pay such persons doing what you do?

A. I don't know of anybody doing exactly what I do.

Q. How much did you pay Mr. Pope when he was there?

A. We paid him a percentage according to the profits.

Q. And a salary too?

A. Partly.

Q. How much salary?

A. We paid Mr. Pope, I think, $35, but I cannot speak positively.

Q. And how large a percentage?

A. Ten per cent.

Q. Of the profits?

A. Of the net profits.

Q. That only applied to the decorating department?

A. As it was then; yes, sir.

Q. Is Mr. Coxon doing the mixing at your place?

A. Yes, sir.

Q. What salary does he get?

A. $40 a week.

Q. And he just does the mixing and nothing else?

A. He is there in the capacity of superintendent, in the capacity I spoke of first; he superintends everything from the glossed ware-room to the raw material.

Q. Do you know of a superintendent getting higher wages than $2,000 a year for superintending?

A. No, sir; I don't call it superintending.

Q. What do you call it?

A. I call it foremanship.

Q. Would you call superintending a higher position?

A. Well, that would be owing entirely to the part that the proprietors took.

Q. You would look upon the proprietors as superintendents?

A. I look upon them as the head of the business

Q. Then, how much does your concern pay for this foreman—the different foremen embracing the whole departments?

A. The whole pottery?

Q. Yes; embracing the whole pottery.

A. $65.

Q. $65 a week?

A. Yes, sir.

Q. And a percentage?

A. No, sir.

Q. Don't you get a percentage?

A. What say?

Q. Do you include yourself?

A. Yes, sir.

Q. You don't include yourself in that sum?

A. No, sir.

Q. Then the decorating department would be in addition to that?

A. No, sir; but it would be if we had a foreman there.

Q. You are a member of that firm?

A. Yes, sir.

Q. And you don't get a salary; well, that is all.

William Wood, one of the complainants herein, having been heretofore sworn, is recalled for further direct examination.

By Mr. Aitkin:

The stenographer was directed to read the last question and answer, and read as follows: *Q.* Who made the first advance preliminary to the making of the contract? *A.* Mr. Magowan. The first time I ever saw him was one dark night, I think, between the 1st and 3d of May. He drove up to my house, two miles out of town in the country, and introduced himself by saying he was Mr. Magowan, of Coxon & Company's pottery. That was the first time I remember seeing him to speak to him.

Q. Now, go right on and lead up to the execution of the agreement.

A. Well, Mr. Magowan says I stopped him on the street and asked him for a position. He is mistaken about that; I never asked but for one position in this country, and that is the first one I got; I have never asked any man since.

Q. Never mind that, leave those outside matters and confine yourself to matters leading up the agreement.

A. Mr. Magowan came to my house, as I say, and introduced himself; I invited him into the house. He came in and commenced by saying that he was connected with the firm of Coxon and Company, and that Coxon had been making very inferior ware for, I think, he said a year and a half past; in fact, I believe he said the ware was worthless, or almost so. He said that their customers were all supplied with it, and that their ware-rooms were full of it, and they were losing their trade; and that he himself and Mr. Alpaugh had decided that that thing could not continue any longer; and they had decided to make a change; and there would be no more ware made until there was a change made in the firm; and his object in coming to see me was to engage a manager to manage their pottery, if they bought out Coxon's interest, which they intended to do, provided they could secure managers that would be satisfactory to them. He said they had been trying to secure the services of Mr. James Barlow, but they found that he had signed an agree-

ment with Mr. James Moses for five years, and Mr. Moses not only refused to release him from his agreement, but threatened to sue him for damages if he broke it; and he said that after seeing Mr. Barlow himself—he and Mr. Alpaugh had seen him—and that they had thought the matter over carefully and decided that they would need two managers—one manager in addition to Mr. Barlow, even if they should succed in securing his services—as Mr. Barlow's time would be almost entirely taken up with modeling and looking after the workmanship.

Q. Did he say anything about what he had heard about you?

A. Yes; he said that he had been talking to men in town who had spoken of me, and from inquiries he had made he thought I was just the man that he wanted in addition to Mr. Barlow, if they could secure his services.

Q. Well, what else was said about the matter?

A. He said that they had offered Mr. Barlow $3,000 a year salary and ten per cent of the net profits of the business if he would come with them; that Mr. Barlow had declined to go with them on account of having signed an agreement with Mr. Moses; and he said if I would come with them they would give me the same salary, and also ten per cent. of the net profits of the business.

Q. Was anything said about securing Mr. Barlow?

A. Yes; when he told me what salary he would give me, I told him that I would like to have some little time to think of it, and he said, "well, take a day or two to think of it;" and he said, "promise me that you will see Mr. Barlow and try and persuade him to leave Mr. Moses and come with us." He went away that night after I had promised him that I would see Mr. Barlow and would try and persuade him to come with them.

Q. Well, did you see him again?

A. He came to my house again the next night, and asked me how I had got on with Mr. Barlow, and what I thought of his proposition to myself. I told him that Mr. Barlow positively refused to go, stating that he had spoken to Mr. Moses about it and he still threatened to sue him if he broke his agreement. He asked me what I thought about his

proposition to me. I told him that I didn't think his proposition was a sufficient inducement for me to leave my present situation. Then he asked me what my present situation was worth. I told him I got $30 a week salary, and five per cent. of the net profits, which were paid to me at the end of each year, although I had no written agreement to that effect. He asked me how much the profits had yielded me—what was the most they had yielded me in one year; and I told him I had been working under that system for seven years, and they had yielded me all the way from nothing up to $1,000, and I hoped they would do better. He asked me if I thought that $3,000 a year would not be sufficient inducement for me to leave East Trenton. I told him my intention was to go into business for myself, and that I should take the first favorable opportunity that was afforded, and I didn't care about binding myself to any agreement such as he wanted me to do for five years, as I would then be tied down and could not accept any offer that was made to me, or any chance that offered itself.

Q. Well, go on. Did you make any agreement then, or did you see him again?

A. He said that he had thought that the offer he had made was quite an inducement, over and above what I was then getting, and it was to my interest to accept it; and that he thought their intention was to run the pottery to its full capacity if they bought out the Coxons' interest, and he had no doubt they would make very large profits; he said he had not the least doubt that ten per cent. of the profits, which he had offered us, would amount to a great deal more money than I had been receiving from the East Trenton Pottery Company, on my percentage of the profits to—well, I am a little confused right there.

Q. Well, proceed slowly. Did he say anything about the sale of the ware?

A. Yes, sir; he said—after saying that it was their intention to run the pottery to its full capacity, he said Mr. Alpaugh was one of the best salesmen in this country, a man who was better known to the trade than any other man, and he could, without any difficulty or trouble, he thought, sell all the ware that they could possibly produce in the

pottery; and that if they run the pottery to its full capacity, as he expected, he thought they would be able to make $40,000 to $50,000 profit, and that our ten per cent. of that amount would make my salary very large.

Q. Well?

A. I then told him that he had stated that the Coxons had made a very large amount of what he called worthless ware for so long a time, and it was in the hands of his customers, and they were complaining of it; and that they had even had some claims made upon them already, and, inasmuch as he had already stated that the warerooms were full of that kind of ware, I told him that, for the first year or two or three years after the running of the pottery, if they got it, they would have to allow a very large amount of claims for all that bad ware, and that that would curtail the profits that would be made, as they would have to be charged against the profits made from that time on, from the business that was done; he admitted that fact, but he said that if I would consent to come with them, that he would make it sure that my percentage of the profits should amount to something for me; he said he would guarantee that they should amount to not less than $2,000 a year, if I would consent to come with them; I asked him if he would put that guarantee in writing, and he said he would; he said that he would guarantee that it should amount to $2,000, even if they didn't make any profit at all—that that should make no difference to us, that we should get $2,000 a year, myself and Mr. Barlow, if I could persuade him to come with them, anyhow; and that if we should make profits so that ten per cent. amounted to more than that sum we should have it; it was only upon his consenting to guarantee to give us that amount of profits each year, no matter whether they were made or not, that I finally consented to go with them; I then refused to sign an agreement for five years, saying that I didn't want to bind myself to anybody for that length of time.

Q. Where was Mr. Barlow during this time?

A. He said he would give me what he had promised, and I could have an agreement drawn up by my own attorney, and that he would agree to do the same thing with Mr.

Barlow, and he requested me to see Mr. Barlow and do what I could to persuade him to come with them; he said, "We must secure Mr. Barlow's services by all means; we have started to get him and we must have him;" he said, "You know it will be a big thing for us if we can secure his services;" he said, "The Mercer Pottery, while he has been in their employ, has made the best reputation for shapes and the fine finish of its ware of any firm in this country, and it is generally known in the trade that Mr. Barlow has modeled all its shapes, and he has gained credit for the fine finish of his ware, and, if we can secure Mr. Barlow's services, it will be the means of giving us at once the benefit of all the reputation that it has taken the Mercer Pottery years to attain."

Q. (By the Court)—Is the Mercer Pottery and the East Trenton Pottery the same thing?

A. No, sir.

Q. Then, when you speak of the Mercer Trenton Pottery do you refer to the pottery of James Moses?

A. Yes, sir.

Q. (Further direct)—Well?

A. He said that if I saw Mr. Barlow I should tell him he would give him the same salary as he had offered me, $3,000 a year, to be paid weekly, and a guarantee of $2,000 a year if ten per cent. of the profits didn't make anything at all, and he said that I should tell Mr. Barlow that they would be sure to give him that; I said to him, "What about if Mr. Moses sues Mr. Barlow for breaking his agreement with him?" "Well," he said, "you tell Jim—" he called him Jim, I believe—"you tell Jim if Mr. Moses sues him that I will agree to pay all law expenses and all losses incurred by Mr. Barlow on account of any such suit." I said, "Will you put that in writing also, Mr. Magowan?" and he said, "Yes, sir; you can have a paper drawn to that effect, and bring it along with your other agreement;" and he says, "Will you see Barlow, and I will come up to your house Sunday afternoon, and you try to get Barlow here and I will meet you, and, in the meanwhile, you do whatever you can to persuade Barlow to come;" I think that would be Friday when he paid me his last visit—

Friday night—and between that time and Sunday I saw Mr. Barlow, and I did as I had promised Mr. Magowan; I did all I could to persuade Mr. Barlow to leave James Moses and run the risk of a suit, stating that Mr. Magowan had promised that he would pay all the damages and expenses, and that it would be quite an advance of salary for Mr. Barlow; Mr. Barlow considered the matter over, and I talked to him two or three times, and at last he partially consented to come, but not finally; anyhow I persuaded him to come to my house on Sunday afternoon and meet Mr. Magowan; Mr. Magowan came to my house on Sunday afternoon, according to appointment, and saw myself and Mr. Barlow, and he renewed the offers to Mr. Barlow that he had made to him through me, and renewed his guarantees that we should have $2,000 a year even if there were no profits at all made, and that he might have a separate agreement drawn up, and they would sign them, agreeing to pay all damages for Mr. Barlow in case of suit; he renewed all those offers to Mr. Barlow; finally, on account of Mr. Magowan's consenting to reduce the time that he wanted the agreement for, which was five years, we finally compromised by having it drawn up for three years and two months—he stating about some notes that came due at that time with Coxon Brothers, and he wanted to be secure in having no change in the management during that time; we finally told him we would go with them, and he told us to have the agreements drawn up, and to meet him and Mr. Alpaugh at the rubber works; on the following day, which was Monday, at two o'clock in the afternoon, I came to Trenton to your office (Mr. Aitkin's office), and you drew up the agreement, and I met them according to the appointment at the rubber works.

Q. Let me ask you a question there; did you make any representation or guarantee as to your ability to increase the production, grade or profits of the pottery to induce them to make this agreement?

A. No, sir; Mr Magowan never asked any such question. He said that after making inquiry, he was perfectly satisfied. I remember saying to him, "Mr. Magowan, we are strangers to each other; I don't know anything about you

and you don't know anything about me, how do you know that I shall suit you?" And he said that from inquiries that he had made he was perfectly satisfied to run all those risks. He said, "you are not a stranger in Trenton," and he said, "it is very easy to get at your reputation." He never at any time asked any guarantee at all from me, and these statements about guarantees are entirely wrong, there was no such thing ever made.

Q. Well, did you meet them at the rubber works to execute the agreement according to the arrangement?

A. Yes, sir; according to the appointment, I presented the agreements as you wrote them out to them. Mr. Magowan read them to Mr. Alpaugh and said they were drawn up in accordance with our understanding, and that they were quite right, and they signed them; and when they say they objected to them they are mistaken; it is not so, Mr. Magowan never objected to them, but said the agreements were drawn up just according to his instructions, and he read them off to Mr. Alpaugh.

Q. Was anything said about guarantees or representations there?

A. Not a word; no such thing ever took place.

Q. In regard to what you could do with the pottery?

A. Not at all.

Q. And did you state that you had examined the plant over again, and that you were satisfied that you could do all that you had promised?

A. I had never been in the pottery in my life until that time; and when they say that I stated that I would not take $10,000 for my percentage of the profits that they were going to allow me, that is the most ridiculous thing in the world to say, because even if they made $50,000 a year profit my percentage would only amount to $2,500, and I would very much like to sell $2,500 for $10,000.

Q. Was this agreement executed at the same time with regard to indemnifying Mr. Barlow?

A. Yes, sir; it was signed at the same time.

Q. Do you recollect anything being said at that time about defending the law suit?

A. Yes, sir; I remember Mr. Alpaugh saying to Mr.

Barlow, "now, Mr. Barlow we will sign this agreement to pay damages, but of course you will defend any suit that Mr. Moses may bring," and Mr. Barlow said he would.

Q. (Showing witness *Exhibit D 11*)—What is your recollection in regard to what is interlined there on the third page?

A. It was never put there with my consent or knowledge; I have some slight recollection—but I believe it was after the agreements were all signed and put in their pockets—of Mr. Magowan's saying that it had been omitted to mention in the agreements that Mr. Barlow was to do the modeling, but he said it was of very little consequence, no doubt that would be all right, and he would make that memorandum on it, and I rather think I saw Mr. Magowan writing a memorandum right away; but I believe it was after our agreements were in our pockets. He didn't ask us to consent to that, or didn't say what he would write, but his intention was, from the way he talked, just to say that Mr. Barlow was to do the modeling. I believe we had our agreements all signed and in our pockets. It is probable he wrote something on his paper, but it wasn't authorized by myself or Mr. Barlow. It would be just as easy for me to deny it entirely, but I want to be just as near the truth as possible.

Q. I have no doubt it was on there when Mr. Cook signed it.

A. I don't say it was not there, but my recollection of the thing is so faint that I cannot be positive about it.

Q. It was no part of the agreement between you and them originally?

A. No, sir; not at all.

Q. Did Mr. Barlow know anything about it?

A. Mr. Barlow was present at the time.

Q. When did you enter upon your duties?

A. We went and took charge of the pottery two weeks after the agreement was signed, which, I believe, was the 21st day of May.

Q. Did you give notice?

A. I gave two weeks' notice to Mr. Cook that I was going to leave him and go with Alpaugh & Magowan; and I went

to take charge of the pottery of Alpaugh & Magowan two weeks from that time.

Q. When did you actually begin?

A. When I went to the pottery on Monday Jonathan Coxon met me at the inner door with a paper from his lawyer forbidding me to enter the pottery, stating that the pottery was owned by the firm of Coxon & Company yet, and Mr. Jonathan Coxon was superintendent, and represented his mother. I took the paper from Mr. Coxon and read it over, and told him that I would run all the risks, and I went in the pottery. Shortly after I saw Mr. Alpaugh and told him what Mr. Coxon had done. He said they hadn't yet succeeded in buying out the Coxon boys, and I then found out that instead of having a pottery and no manager, as Mr. Magowan had stated, that they had two managers and no pottery, and I felt rather funny about it. Mr. Alpaugh finally took me around the pottery—took me through the shops and let me see them, and that was the first time I had been around that pottery. Jonathan Coxon forbid him, in the name of his mother, from going into any of the shops; that his mother had a half-interest there and he represented her, and as her superintendent he forbid him entering the manufacturing part of the pottery. Mr. Alpaugh took an iron crow-bar and broke open the door and went into the slip-house and clay shops. I found that he and the Coxons were all at loggerheads, and there was very little prospect of their coming to any arrangement, and after arguing together for several days, I myself suggested to Mr. Coxon that it would be well to settle the dispute by arbitration if both parties could not agree, and it was finally settled by arbitration at my suggestion.

Q. What part of the management did you take charge of, Mr. Wood?

A. I took charge of the mixing of the bodies and glazes; after consulting with Mr. Barlow, and putting our knowledge together, I took charge of that part, and buying in the material, and taking the superintendency of the pottery generally except the glossed ware; that Mr. Alpaugh superintended himself at all times.

Q. What part did Mr. Barlow take?

connection with the pottery, your duties generally—what you did?

A. I did the mixing, superintended the manufacturing department generally, except the workmanship in the clay shops, and took charge of the decorating department, bought in all the materials and assisted in a good deal of the work that wasn't embodied in our agreement.

Q. What was that?

A. Figuring at prices.

Q. What?

A. Figuring at selling prices for new goods that came out—making out new price lists; I worked a good many hours on that kind of work when I had no need to do it.

Q. Did you employ all the hands?

A. I did, except those employed in the clay shops; Mr. Barlow had charge of that, and those employed on the glossed ware Mr. Alpaugh had charge of that; he had a man named Nevius in the glossed wareroom, who did that under his instruction.

Q. Is that the same room that Mr. Gruesser has spoken about, in which he found the defective ware?

A. That is a part of the same room.

Q. Is that all under the management of Mr. Alpaugh?

A. It has always been, with one or two exceptions of very short intervals; they found the expenses were running up too high, and they asked me to take hold of it for a short time and try to keep the expenses down, and I did so on several occasions for three, or four, or five, or six weeks at a time, and on two or three or more occasions I succeeded in cutting down the expenses, but Mr. Alpaugh assumed charge of it again and I had nothing further to do with it.

Q. How long did you manufacture imperial china?

A. I manufactured imperial china from the time of Mr. Barlow getting out his first models until we left in March, 1886.

Q. Now, Mr. Wood, there has been a good deal said about the character of the imperial china that you manufactured crazing. What have you to say about that?

A. If I were to say we didn't have any crazed ware, I should say wrong; I don't say that of any pottery in the

A. Mr. Barlow did the modeling, superintending the workmanship in the clay shops, and he was appointed to take charge of the decorated department when he first went there.

Q. Well, did he keep charge of the modeling department at the request of the defendants?

A. He always had charge of the modeling department; he did the modeling himself; you mean the decorating department.

Q. Did they insist upon his keeping charge of the modeling department?

A. They always insisted upon Mr. Barlow's doing the modeling; yes, sir.

Q. Well, what was the effect of the management of their pottery when you took charge of it, on the work you did—the ware that you made?

A. We commenced to continue the manufacture of the white granite and C. C. ware, the same kind of goods that Coxon & Company made; and after Mr. Barlow had modeled some new shapes we commenced to make what was called the imperial china.

Q. Well, go on.

A. Well, Barlow was so busy in the modeling department that they requested me to relieve him of his duties in the decorating department, so that he could devote more time to the modeling. That was after we had been there some two or three or four months. After that, in addition to my other duties, I had to take charge of the decorating department. After Mr. Barlow had some new shapes ready we commenced to make what is called imperial china, and after we had got a complete dinner set modeled we commenced to ship it.

Q. How long did you do that after you begun?

A. I hardly recollect, but it was several months before we were able to produce any complete sets so as to put them on the market. It takes a long time to model a dinner set complete.

Q. Well, you haven't answered my question as fully as I wanted you to answer it, as to what your duties were in

world that makes that kind of ware; I don't think there was ever one that didn't have crazed ware; but I believe we had as small a percentage of crazed ware as any other pottery in America; in fact, we had the reputation, I believe, on the road, judging from what Mr. Alpaugh said, and what the salesmen said, of making the most durable ware, the least liable to craze than that of any other pottery.

Q. Complaint is made that you fired some of it, I believe, too soft, and had to re-fire it; what have you got to say about that?

A. If I were to say we never had any soft ware, I should say wrong, but their representations here are very greatly exaggerated; all potteries have more or less soft ware, but I don't believe there was ever any pottery had less soft ware than we had, and when they claim that there was half a kiln at one time, and that that was repeated thirty different times, it was the most ridiculous statement in the world; we never had half a kiln of that ware at any one time, and I don't believe we had half a kiln of it at all during all our time we were there where it was re-fired.

Q. You speak now of imperial china?

A. Yes, sir; the very fact of their finding some in the saggers, as they have testified to here, only proves that I attended to my duty, because when I found any I made the man set it back to save handling; any manager attending to his duties does that.

Q. What did you set it back for?

A. To be re-fired at the time of the next kiln was fired; it saves carrying it through into the biscuit room and re-handling it, which makes it liable to be chipped or broken; but by leaving it in the saggers you save all that risk, and there is just so much less loss; if I had a manager managing a pottery for me, and he didn't do that I would discharge him.

Q. Will you give us right here the expense in connection with the manner of firing a kiln?

A. A biscuit kiln?

Q. Yes.

A. I think I can; I think the expense of placing the biscuit kiln would be about $30—$28 to $30—of course I

am not stating it exactly, but just from memory, but I know that is pretty close to the truth; the expense of drawing it would be about $20; it would take about $50 worth of coal to burn it, and it would cost, maybe, $10 or $12 for the labor in connection with firing it and the labor surrounding it.

Q. Explain what you mean by placing and drawing?

A. By placing the ware I mean putting it in, and by drawing it I mean taking it out after it is fired and putting it in the biscuit ware-room.

Q. So as to have it ready for the next process?

A. That would make it ready for being dipped in the glaze and going in the glossed kiln.

Q. What is the expense of the glossed kiln-firing?

A. The expense of placing in the glossed kiln would be a little more, probably $35; it varies with the size of the kiln, and somewhat according to what you are making. The drawing of the kiln would be about the same as a biscuit kiln, $20 all told.

Q. What is your practical experience as to the even or uneven heat of the fire of a kiln under the ware, as to the ware coming out alike?

A. It is not possible to bring ware out of one kiln all of the same degree of hardness. That is an impossibility. The construction of the kiln, if anyone sees it, will show them that at a glance. Around the kiln is what we call ten mouths or fire-holes; some have nine, some ten, and some eleven, according to the size of the kiln; and from each fire-hole there runs a flue or bag opening inside, four feet on the inside of the kiln, and there is as many of those as there are fire-holes on the outside; and when the men first commence to place a kiln they put a bundle of ware between each one of these flues or bags that project about twelve inches from the kiln, and then start and put a complete ring around it that goes around the outside of each of those flues; and the wares that are put in the saggers or bags are between the flues, and those that are put immediately next to the fire get more of the fire, and is consequently harder than the ware that is put several rings away from them, therefore the contents of a kiln must necessarily be fired unequally;

and we have to put ware in those flues that will stand more fire than some other ware will, so that they won't get crooked and out of shape. That is done in all potteries, and when Mr. Magowan said that a kiln of ware could be fired to one degree of hardness all the way through I think he made a mistake; and any practical potter would be able to explain that away very easily. The flues run from the fires to the center wall hole to the top, and the saggers with the ware immediately around that are liable to be fired very hard, indeed no matter what care is used. They are sure to be fired harder than what it is in the middle of the kiln. I have fired 800 or 900 of them myself, and know what I am speaking of from experience.

Q. Complaint is found about their finding some secreted ware which had been thrown away by you in your management.

A. Secreted?

Q. Yes; that is what they say; what have you to say about it?

A. I have no recollection of anything of the kind; I had no necessity of any concealment of any ware at all from anybody; my interest lay in making the best use of all I could. If you refer to what Mr. Mulford spoke of this morning I can explain that, because if he had understood the subject he was talking about, he would not have stated it as he did. He referred to ware found in the kiln shed benches, which were large dishes, and we used those dishes for what we called covers. A large dish is hung on a sagger on three or four sharp-pointed pins that don't make much of a mark on the ware; one sagger is placed on top of another until there are probably three or four of them in height, and another sagger is placed on top of them; and sometimes when one of them on top will have a large crack across the bottom, it will be partly worn out and it will be liable to open in the fire and the dirt will drop through the top of the sagger to the lower sagger, and when we find a sagger of that kind we used to preserve it by putting one of these covers over it; we used to preserve it and take care of all the large dishes that would otherwisebe broken in the glossed ware-room; and instead of putting such a dish in the

dipping room, we would put them away in the benches and use them in the way I speak of, and when the kiln was drawn we took them off again and stored them under the benches to be used again the next time. A large dish is a very expensive piece of ware, and we always liked to get as much good as we could out of them, and so they were preserved under the benches for the purpose of using them from time to time as they were needed, when we got bad saggers with bad bottoms in them.

Q. Do you know of any other dishes than those?

A. No, sir.

Q. What were they?

A. Large oval dishes; sometimes we used plates for that purpose.

Q. Did you have plates there?

A. They were in the biscuit ware-room, and they were used for what we call setters; I think he must have referred to them when he said there was a large lot of useless ware.

Q. Explain about the use of them, and the difference between them.

A. A plate is what is used for a tea table, and a dish is used for a meat dish; we call one a platter and the other a plate. Mr. Magowan stated in his evidence that there were a lot of hard-fired ware in the biscuit ware-rooms; he must have been referring to a lot of what we call setters, and these are plates that are chipped or fire-marked, or are poor from some cause or another, and consequently are not sent into the glossed ware-room. All such setters are placed on one side for use when firing ware in the glossed kiln; we set one on the fine sand on the bottom and that supports the other plates on top so that they will come out straight. Some of these plates, used as setters, are fired a great many times over, and consequently they get to be very hard, and would seem, to an unpractical man, to be spoiled, but they have been accumulating through the entire three years that we were there. There were several hundred dozen of them in that way all useful, and we used them in the work of the pottery over and over again. We used them in every kiln; sometimes we have a thousand dozen plates in one kiln; sometimes we have four or five kilns going at once, and then

again we would have them lying around in the pottery, hundreds of dozens, and it would be a sheer waste to break up that kind of ware, therefore we kept it and used it for that purpose.

Q. During the time you were there, how did the ware turn out as to quality—firsts, seconds and thirds?

A. Well, I think it turned out as good as I have ever seen it; we made a large quantity of thirds, but it wasn't because our ware didn't come out of the kilns as good as it did at other potteries; it was on account of the close selection that was made; on account of our firm being very anxious to build up a new trade, which had to be taken almost entirely from other potteries; they had to take another pottery's custom, and they were very anxious to take other potteries' trade, consequently selected close so as to give them a high run-of-kiln ware, consequently good ware was put aside, and instead of being sold as run-of-kiln it had to be sold as thirds. You can take a kiln of ware that has been drawn off and set on the floor, and you put a man to select out and take out the thirds, and he probably will put out ten per cent. of that ware for thirds, and the other would be called run-of-kiln ware, and would be shipped to fill orders for run-of-kiln ware; and you may tell another man to select, and instruct him to select close because it is to be shipped to a particular party, and that man may go and set out fifty per cent. of the ware, so that in those two instances one party will make ten per cent. of thirds and the other fifty per cent., and the difference would be entirely according to the judgment used by the selector, or according to the instructions given him by those in charge.

Q. How was it with the goods sent to Mr. Donoher's customers?

A. Mr. Donoher was always particular, and his goods were very closely selected, and as a rule, it was understood that his orders had to be selected in that way, so much so that I have heard Mr. Magowan himself growl very much about the ware being selected so closely for Mr. Donoher's customers.

Adjourned until the hour of 10 o'clock in the forenoon of Friday, the 11th of March, 1887.

Transcript of short-hand notes of testimony taken in the above stated cause, pursuant to adjournment, before his Honor, John T. Bird, Vice-Chancellor, at Trenton, N. J., on Friday, the 11th day of March, 1887.

Appearances—Mr. Aitkin for the complainants; Mr. G. D. W. Vroom and Mr. Barker Gummere for the defendants.

William Wood recalled, for further examination.

By Mr. Aitkin:

Q. Speaking of the imperial china that you made, do you recollect the burning and drawing of the first kiln?

A. I very well recollect the first imperial china ware drawn out of the kilns; yes, sir.

Q. Who were present when it was done?

A. Well, we were all present; we were interested to see how it came out.

Q. Was Mr. Alpaugh present?

A. Yes, sir.

Q. State what the result of that drawing was as to the quality of the ware?

A. Everybody seemed very much pleased with it; it was very fine quality of ware.

Q Do you recollect what Mr. Alpaugh said about it?

A. Mr. Alpaugh seemed very much elated; he said he had never seen such nice ware as that was; he seemed overjoyed about it, so did Mr. Magowan and so did everybody, and it was pronounced by the other manufacturers—[Interrupted].

Q. Never mind that. He was overjoyed about it?

A. Yes, sir; well pleased, that is what I meant.

Q. He said that towards the end of the year there were complaints of crazing beginning to come in; what have you to say about that?

A. I have no knowledge of anything of that kind; we had a very small quantity of imperial china ware crazed, in proportion to the amount of goods we made.

Q. Complaints in regard to what ware did come in?

A. There were large complaints and large quantities of the ware came in, in regard to the old Coxon ware manufactured previously.

Q. How long did they come in?

A. Until I left; until a few days before I left goods manufactured by the old Coxon Company were returned.

Q. Does this book, which has been produced here, contain the return of those separately?

A. No, sir; not separately about it.

Q. (By Mr. Vroom)—Do you know anything about it?

A. Yes, sir; I do know.

Q. Have you examined the book?

A. I know they would come mixed together, and I frequently asked if there was a separate account kept of those things, and they said no; that is what I know; I cannot say from seeing the books myself.

Q. That is what I supposed you would know—nothing about the book.

A. I know what they told me, that is all.

The Vice-Chancellor—Perhaps it is made competent by what he said—that they told him.

Witness—Mr. Alpaugh told me, I think—said to me that there should be a separate account of the old Coxon Company claims that came in, but there was none ever kept to my knowledge; I think you will find on investigation there was none kept.

Q. (Further direct)—Do you know at what rate the goods on hand, manufactured before you took charge, were inventoried?

A. I don't exactly remember the correct discount they were taken at, but there was a very much smaller discount taken off the goods on taking stock than Alpaugh & Magowan took off afterwards; they took additional discounts off, which reduced the percentage of profit; that was done after we went there; I complained to Alpaugh & Magowan about it; they said it would not make any difference, that they wanted to take the thing low enough in order to be sure.

Q. Can you tell us about the time when you stopped the manufacture of granite and C. C. ware?

A. I think it was about July or August, in 1884.

Q. Can you tell us why you stopped that manufacture of that kind of ware?

A. Our success with the imperial china ware had been so great, and we gave so good satisfaction to the trade generally, that Mr. Magowan thought we could run the pottery to its full capacity on the imperial china ware only, and he decided to discontinue manufacturing the white granite and C. C. ware, as they had to be sold for a less price than imperial china

Q. I think you did tell us yesterday—I am not certain of it, so I ask you again—in regard to the imperial china you made, crazing more than any other kind of ware?

Vice-Chancellor—He spoke about that, but he can answer it again. Let him answer it.

A. The imperial china that we manufactured did not craze more than smaller ware manufactured by other potteries, if that is what you mean.

Q. Yes.

A. In fact, I believe it crazed less than ware that I have seen.

Vice-Chancellor—That is what he said yesterday.

Q. Reference has been made to the vitrified hotel ware; will you give a history of that?

A. What do you mean by a history?

Q. (By the Vice-Chancellor)—Well, as connected with this particular business, your work there, that is all you can do.

A. The first that I remember about vitrified hotel china ware was from Mr. Thomas Donoher; he seemed to have a particular trade that led him, took him in connection with the hotel men, and he was very anxious to introduce some kind of ware that would compete with the ware manufactured by the Greenwood Pottery; he asked me one day if I had ever had any experience in manufacturing vitrified china ware; I told him all the experience I had ever had was a few years ago previous to that; I had made a few toilet sets while I was in the East Trenton Pottery Company, but was

not very well pleased with the way they came out of the kiln, and didn't make any more; I told him I thought Mr. Barlow had one in his house at that time; Donoher said he would see Barlow and ask him to bring one of the pieces over, and he did so.

Q. Had you shown any samples of that kind of ware previously, to any one of the firm?

A. No, sir.

Q. Did you have one in your possession?

A. No, sir; I didn't have a sample in my house, and didn't have any sample at all; I never showed any samples of any kind whatever.

Q. What was next done in connection with it?

A. After Mr. Donoher had seen a sample of the toilet—a piece of the toilet ware that Mr. Barlow brought from his house—he requested me to make some samples in hotel ware, and I told him that I had so much work to do I didn't want to do it, and he took a sample of the ware we had, I think it was a soap-box cover, to the office, and Mr. Alpaugh and Mr. Magowan, or both, requested me to make samples of that ware, and let them see what it would be like in hotel ware. I did so just simply to let them see how it would look. They were very much pleased with the samples when they came out, and Donoher took them, I believe, to Boston. The hotel men, I believe he said, seemed to be pleased with it, and I think he right away took some orders without consulting with me, whether it would be practical to make that kind of ware with our other ware or not. They then wanted me to make that kind of ware. I told them it would be a mistake to try to make vitrified hotel ware with the imperial ware, as the Greenwood Pottery had tried to do the same thing and failed, and it was very improbable if we could make a success of it after another large pottery and enterprising manager had failed to do it; but they still insisted that I should make a small batch of it, and let them see what it was like. Well, I did so; I made a small quantity of it, and they kept samples of it, and I think they sent some of them around the country, but I told them there would be great difficulty in keeping the two kinds of clay separate in the shops, that

in making our first batch we had found some difficulty of that kind already, and it would be almost impossible for them to run the two kinds of ware together, because if the clay got mixed it spoiled both, and I tried to persuade them not to go on making it, but Mr. Magowan said, "Now, look here; we have taken orders for this ware, we have issued circulars to the trade, we have instructed our salesmen to sell it, now we must go on and make it." I said, "Mr. Magowan, that is all wrong; you ought not do that sort of thing without consulting me about it, if I am to produce this kind of ware; you ought to know if I could possibly do it, before you take these steps;" well, he said he thought we could do it and make a success of it, even though the Greenwood Pottery had failed, and he insisted I should make another batch of clay, a little larger quantity, and try again; we did so; I think I mixed about four or five presses of clay the next time; we got the men to work in the shop on it; I watched it very closely myself to see how it would work, and we found a great deal of difficulty in the shop in keeping the clay separate; Mr. Barlow also found great difficulty, the men complained, and we found it to be necessary to build new shops, and have separate departments altogether to manufacture it in, and Mr. Barlow came to me finally, one morning, and he said, "William, it is impossible for us to make this kind of ware with the other, and we shall have to stop." I said, "You know what Mr. Magowan says, he insists on making this ware; you had better go in the office with me and see him;" we went into the office and had a consultation together; Mr. Magowan was present, and decided that morning to discontinue that kind of ware, rather than build separate workshops to do it; there was the end of it, we had then used up about all the clay but two presses; Mr. Alpaugh was present at that interview; Mr. Barlow was present and Mr. Magowan.

Q. Did you buy any saggers for that work?

A. No, sir; the others were used; we didn't buy one cent's worth or make any; their statement about saggers being bought are untrue.

Q. What expense was incurred with reference to that vitrified china ware experiment?

A. There were about four presses made, which would amount to probably four or five tons, and the materials and making of the clay would be worth about $15 per ton; it would cost something probably like $100 to pay the workmen for making it into ware, and the four presses of clay would be about one-fifth or one-fourth of a large kiln of ware; the placing of a kiln of ware would be about $130 or $140; it would be about one-fourth of that; I should not think the whole expense of the whole business would amount to $200; for that $200 they have got the biscuit ware now, and they can put any kind of gloss on and turn it into more money than they expended on it.

Q. Was that in the ware-room when you left?

A. Yes, sir; it was not seen there, because Mr. Barlow and myself were afraid if Mr. Magowan saw it he would insist on its being made, and we knew the great difficulty there would be in running the two kinds of ware together; it was kept back for that purpose.

Q Was that before or after engaging in the manufacture of the printed ware?

A. We engaged in that, I think, before we commenced with the printed ware.

Q. Now, the printed under-glazed ware, will you give us your history of that—the under-glazed printed ware of which complaints were made of the failure and great loss—when was that first undertaken and how?

A. I think that we commenced to manufacture under-glazed printed ware, or biscuit printed ware, in 1884; somewhere in the middle of the year, the summer time, in 1884, in small quantities; there are two kinds of ware called under-glazed printed ware; one is under-glazed colors printed on the gloss; I don't know exactly what you mean, that is why I give this explanation.

Q. Give us the history of it?

A. One is printed on the gloss with under-glazed colors; the glazed ware is put back in the kiln and fired; as the gloss fuses it lets the color into the gloss and makes it so durable that it will not wear off or eat off with different kinds of acids, as enamel will. You are referring to the kind glazed on the biscuit, are you though?

Q. I am referring to that kind you made, which it was claimed by the defendant was re-fired and lost.

A. The first ware we made was printed on the gloss, then Mr. Donoher complained so much that our ware, that we produced, ran very much in the colors; the gloss ran and carried the colors with it; he said that Burroughs & Mountford and Willets were producing a better quality of that kind of ware than we did; and, after making inquiries, we found that they had a special kiln for firing their printed ware that they had printed on the gloss in under-glazed colors; and, after consulting together, Mr. Magowan said if it would pay Burroughs & Mountford and Willets to have a small kiln to fire that in especially, it would pay us to also, and gave me instructions to see a kiln builder and get the lowest figures I could to build a small kiln for firing in printed ware, so that we could produce it as good as our neighbors, Burroughs & Mountford and Willets; I carried out his instructions, and got the lowest figures I could from a contractor for building the kiln; and after the whole thing was complete, I believe it cost about $1,000; they say $1,200 but I believe it would amount to about $1,000, if I remember right; and after we commenced to print on the biscuit, that kiln was used for firing the ware that was printed on the biscuit.

Q. Did you have the samples of the printed ware, such as you have spoken of?

A. No, sir.

Q. Did Mr. Donoher show you any samples of English printed ware?

A. Yes, sir; he sent some samples from Boston; one was a toilet set, printed in blue; another was a stand with a cover, printed in sepia; others were printed with little border patterns filled in with different colors; he said if we could make that ware a success, we should have to do it on the biscuit, that the English printed ware was so much nicer than the ware we were doing on the gloss; that it would not sell, and asked me if that could not be done on the biscuit; I told him I had had no experience at all with that ware in this country, although I had in the old country. He asked me if I would not produce samples; I told him

if we must print ware on the biscuit it would be necessary to make a body similar to the body used by English manufacturers, which would be very much inferior in color to the ware we were making, but would be stronger and more suitable for hotel use that they wanted it for; he consulted with Mr. Alpaugh about that, and they decided if the printed ware was not as good in color as our imperial china, it would be no inducement for the dealers to buy it, as we wanted to excel the English in color; I told him I didn't believe ware printed on that kind of body would stand; they asked me to send through samples of matt blue and let them see what it was like; I did so; I sent through samples of matt blue and sepia and sable gray; the sable gray and sepia came out very good, but the matt blue came out very inferior, on account of our firing too hard for it; Mr. Donoher asked me to send some samples of matt blue through; I did so, fired a little easier, it came out very nice; he was very much elated with the samples, and took them to Boston, and Mr. Alpaugh was very much pleased with them, and had me to print some ware up for his own use, for his own house; there was quite a bit of it printed, and he supplied his house with it; I told them all the time that I was afraid that ware would not stand, it would craze; that I had never seen ware printed on that kind of body, as that body was made for hard gloss firing, and to make printed biscuit ware a success we should have the fire a little easier in glossing, consequently the gloss was liable to craze; Mr Alpaugh had a lot of the ware made in matt blue and took it to his house; he said everybody that went there admired it very much, and he asked me to go on printing it; I told him we had only got a small amount of color and I could not print much of it; he sent me down to New York to buy up all the color I could get there from the color dealers, and gave an importing order for 80 pounds; that day I saw Satoris & Co., and brought what small quantity they had from New York with me, and printed some we had with it, not a very large quantity, for we didn't have very much color; in about two or three months the color that had been ordered from England came; during that time Mr. Alpaugh had been using the ware that had been printed, in his house; I still tried to

persuade them not to continue printing this ware on our imperial china body; I told him it was not suitable for that use; he still insisted that it would come all right, for the ware he had at his house stood all right, he had not seen a piece of it craze. "Yes," I said, "that ware is only done in small quantities, and was very carefully selected; I gave the selection of that ware my own personal attention, and if it is selected to be fired as this was, according to my judgment it would stand better than if it is taken just as it comes from the kiln, some a little too hard, some a little too easy;" but he said he was thoroughly satisfied that ware would stand; he didn't see why I should object to making it on that body, that it was very much admired by the trade on account of its white color, and he said that Donoher had taken very large orders for it, for hotel use in Boston; I told him that I still objected to making that kind of ware on that body, and he finally told me that if I would not send that ware through in quantities, that he had an application from a man who understood biscuit printed ware, and he would set him on to do it; I at once demanded from Mr. Alpaugh to be released from my agreement—that was said in Mr. Barlow's presence, in Mr. Alpaugh's office; Mr. Alpaugh also told Mr. Barlow in his room, that if I didn't send the ware through—[Interrupted].

Q. (By Mr. Vroom)—Were you present, did you hear that?

A. No, sir.

Q. (Further direct)—What did he tell you afterwards?

A. He told Mr. Barlow in his room and Mr. Barlow told me.

Q. Well, Mr. Barlow will tell that.

A. Well, I didn't know about that. I am not accustomed to the rules of court; this is the first time I was ever in.

Q. That is all right; you were speaking of what took place between you and Mr. Alpaugh.

A. Yes, sir; Mr. Alpaugh threatened to put another man to produce printed ware if I refused to send it through; I told him I believed it would be a big mistake, and that if my money was invested in that pottery (he cannot but remember it). I said, "if my money was invested in that pot-

tery I would not make one piece of that ware on that biscuit;" Mr. Alpaugh cannot but remember that. I told him when he had taken the ware to his house, I had taken some to my house, and had seen one piece craze already; he said it was over-dipped; yes, I said, it was an over-dipped piece; he said any ware was liable to craze if it was over-dipped; I told him I had no confidence in making that ware on our imperial china body, and unless they allowed me to make a body according to my idea I didn't intend to make it; he said according to our agreement I was obliged to proceed according to their instructions; I told Mr. Barlow how I felt about it, and asked him whether I had better drive out and see Mr. Magowan at the rubber works; he said he thought it would be a good idea to do that; I went out one afternoon to see him, and told him how I felt about this matter; he said that Mr. Alpaugh had given the ware a thorough test, and Mr. Donoher had taken a large order for it; that they had printed circulars for it and issued them to the trade, a printed price list, and they would have to go on making it; that he didn't see why I had fear of the ware; I told him I had fear for the simple reason that I had never seen ware printed on the biscuit on that kind of a body; Mr. Magowan said from what they had seen from the ware already, if I would go on making it they would be willing to release me from all responsibility; they would assume that; I said I didn't want the firm to make any loss; that as an experiment I didn't know how it would come out; I came back and told Mr. Barlow what he had said, and I went down to your office.

Q. Say you took advice.

A. I went down to my lawyer's office and asked him if I would be compelled, under my agreement, to produce that ware as they wanted it produced on a body; that I had doubts of its coming out good, and my lawyer asked me if they would hold me responsible for it.

Q. Don't give the whole details, just give what you were advised to do.

A. My lawyer asked me if they would hold me responsible; I told him no, they would assume the responsibilities themselves; then my lawyer said he thought I would have

to make it; I didn't feel satisfied then, but went and consulted a manufacturing friend of mine, Mr. James Moses, at that time, and asked him if he was in my place if he would do a thing contrary to his own judgment if he thought it would be against the interest of the firm he was working for.

Q. Just tell the result.

Objected to.

Q. Well, I don't care about that.

A. I didn't mention the particulars of our business to Mr. Moses—[Interrupted].

Vice-Chancellor—You had better say no more about it. When he says he took the precaution to consult others, it does not matter who it was; if they were experts he can give the name, but that is all.

Q. Did you then proceed to make the under-glazed printed ware?

A. I then had another interview with Mr. Alpaugh; Mr. Alpaugh still insisted that I should produce that ware, and again referred to a letter of application he had from a man that understood the manufacture of biscuit ware, and said if I didn't do it, they would put the man on; I said, "If you will release me from all responsibility, I will make it for you;" and he said, "All right, they would do it;" I went on and made it.

Q. Well?

A. Then, when we began to get it through, I used very great care in having it selected that I thought it would be fired so as to bring it good in biscuit, but they urged me so to rush it through in large quantities, and our biscuit stock of ware was so small that we had to print on all kinds of ware that came out; I had to print large quantities of it that I thought could not possibly come good; I explained our position to Mr. Alpaugh and also to Mr. Magowan, and they said we must have the ware, to send it through; it would probably come better than I thought; I had some ware when we began to do it; I had all the ware very carefully selected, and the ware stood very well; it didn't craze for a long time; I didn't see any of it craze; I took eight

or ten plates of that ware to my house, that biscuit printed ware, and put it on my table, and have had it in use there for about two years, and told the folks to give it hard usage; those plates are wrapped in that paper now.

Q. Have you those plates now? Please produce them.

A. Yes, sir; they are right here [producing plates]; some of our first production; you can examine those plates; they have been in our house for two years about; some of the first Elberon pattern we produced.

Q. Those are productions of that ware?

A. Yes, sir; which have been in use on my table for two years.

Vice-Chancellor—Just let the witness state here what kind of use, whether daily.

Q. How often?

A. Almost daily use; just as often as we need to use them.

Mr Vroom—That is printed on the gloss.

Witness—No, it is not; that is not printed on the gloss; they never printed a piece of that ware on the gloss; there never was a piece of ware printed on the gloss of that kind, in that pottery at that time; that is printed on the biscuit; why, there is so thin a gloss on that ware that there is not enough to absorb the color if it was printed on the gloss; no, sir; that is printed on the biscuit; yes, sir; as true as I sit in this chair, and that is taken out of ware that you have seen lots of it just as good as that when it was properly selected.

Q. (Further direct)—A few minutes ago you spoke about asking Mr. Alpaugh if he would not release you from your agreement. I don't think you completed that. What were you saying about it?

A. I told Mr. Alpaugh if he wanted to put another man to produce the biscuit printed ware, I would retire and he could do so, and be released from my agreement; I preferred being released after that; he said he didn't mean that; if he put on another man, it would only be to take charge of the biscuit printed ware, and I could go on with my other duties—he didn't mean to do that.

Q. You commenced and continued the manufacture of the under-glazed printed ware. In the progress of it, how often did you print it?

A. Well, we printed it sometimes a great deal faster than we ought to; sometimes we made two small kilns a week; a small kiln would be one-fifth or one-sixth the size of an ordinary kiln.

Q. Were you rushed in the manufacture?

A. Yes; we had to rush it through against my judgment to fill the orders we had taken.

Q. What did you say about that matter?

A. I complained to them that I could not produce a proper quantity or properly fired ware for printing on the biscuit to fill the orders; they said they must take whatever we had to fill the orders or they would be countermanded, as people were writing and complaining about their not being filled.

Q. Then do I understand you that you hurried the ware through the kilns because you were pressed to do so?

A. Yes, sir.

Q. Against your own judgment?

A. Against my own judgment and protest.

Q. What was the result of the ware that came out of those kilns thus hurried?

A. The result was, a large quantity of the ware came out of those kilns crazed, as this ware appears in this basket.

Q. What made it craze?

A. On account of its not being properly fired in the biscuit in the first place, and on account of its not being printed on a suitable body. I think any of it is liable to craze printed on that body; I always thought so, and told them so; not so liable if properly selected.

Q. What do you know about the goods being returned?

A. I know some were returned.

Q. Do you know how many goods were returned?

A. I don't know; the goods that were returned, as a rule were—in fact, I believe in every case, as far as I can remember—were put in the kiln and re-fired and shipped back to the parties.

Q. They were all re-fired and re-shipped back to the parties?

A. Yes, sir; their loss in connection with that thing—[Interrupted].

Q. Well, I was going to ask you what did it cost to re-fire the kilns with that ware in. Have you made an estimate—can you give a percentage?

A. Yes; it cost in the neighborhood of $36 to $40 to place that ware in the kiln.

Q. How much of it?

A. A kiln full; you can only estimate a kiln; you cannot estimate a smaller quantity of the ware; not having to be dipped, of course it would not cost so much to re-fire it; it had already been glazed and was returned for our re-firing only; the placing of the kiln and the drawing would cost in the neighborhood of $55 to $60.

Q. (By the Vice-Chancellor)—You said the re-firing would cost from $35 to $45?

A. The replacing; and the expense of drawing it out again would cost $20, probably—these are not exact figures, I am giving them at random from memory, but they are somewhere near about what is right; the amount of coal it would cost to burn a kiln would be about $50, and the labor in connection with firing, and fireman's pay and laborers' pay around it, would probably amount to $10; when one of these kilns was drawn it would net not less than $3,000 per kiln.

Q. Per kiln?

A. Per kiln, at the price that the printed ware was sold at, probably $4,000.

Q (By the Vice-Chancellor)—Do you mean to say the net profits?

A. No, sir; the product of the kiln; I have figured it carefully over.

Q. (Further direct)—The percentage on cost, per thousand dollars, would be about what?

A. It would not be over about five per cent. to re-fire the ware.

Q. (By the Vice-Chancellor)—I understood the witness to say in the first place the replacing would be at an expense

of $35 to $40; re-firing, $50; drawing, $20; coal, $50; labor, $10; now, I ask that because I thought some of those things were repeated.

A. The re-firing, how much?

Q. $50.

A. The re-firing would be, for the fireman's expense and laborers, about $10; the coal would be $50

Q. That is what I thought; you certainly used that expression; but perhaps you put the two together.

A. Probably I might.

Q. See if the rest is right—replacing, $35 to $40; drawing, $20; coal, $50; labor, $10.

A. That is about right; yes, sir; that is about as near as I can get it; then there would be some loss in wear and tear and saggers, probably $25; there is always a certain amount of loss in wear and tear on saggers; that is just a rough, off-hand estimate, but somewhere near what it would be; I do not think the expense of re-firing the ware would amount to over five per cent. of its net value.

Q. (Further direct)—Estimating for all losses?

A. No, sir; the re-firing, there would be some loss in addition to that.

Q. What would that be?

A. Mr. Magowan spoke of that in his evidence; he said, "there would be 80 or 90 per cent. of good ware come out of that;" probably there would not be over 90 per cent., there would be 10 per cent. lost, that is, loss that would be thirds; it would not be lost, but sold as thirds from bad kilns or chipping, etc.

Q. A loss of ten per cent. then in thirds; it would not be wholly lost?

A. No, sir; the whole loss, all told, would not amount to above 7 or 8 per cent. of the net value of the ware; those large quantities of goods they speak of, which were re-shipped, were re-fired and sent back to the parties who re-shipped them to them.

Q. Can you tell us how many of those goods, about, were re-fired?

A. I could not; it could not be such a very large quantity, for they made so small a quantity of them; for we only had

a little bit of a kiln and we only made the hotel ware that they complained of for about a year; I don't believe there could possibly have been $25,000 worth of those goods produced in the whole history of the pottery, which would be a very small part of the whole production of the pottery; we must have produced there in the neighborhood of seven or eight hundred thousand dollars' worth of ware; that printed ware would only amount to about $25,000.

Q. You mean for the whole time?

A. For the whole time we were there.

Q. Including the under-glazed ware?

A. Including all, I should think; in that neighborhood; I cannot speak correctly, but I used to have the run of the shipping books, and know exactly the amount of the goods shipped, and it would be from $650,000 to $700,000 worth during the time I was with them, and I don't believe we manufactured over $25,000 worth of printed biscuit ware during the whole time.

Q. Was some of that not sent away at all, but left in the ware-rooms?

A. Yes, sir; some of the biscuit printed ware?

Q. Yes.

A. Yes, sir.

Q. How much of that?

A. Quite a large quantity of it.

Q. What was the matter with that?

A. There was nothing particularly the matter with it; I thought—at least, there was a looseness in taking orders; Mr. Donoher would take orders to ship six or nine months ahead, and they would print it that long before it was wanted and store it away in stock, and by the time the parties wanted the goods they would change their mind and want the difference in French china or some other goods, and the stock was left on their hands.

Q. No orders for it?

A. No orders for it.

Q. The orders had been countermanded?

A. The orders had been countermanded.

Q. Were you present at an estimate made by Mr. Gruesser of the stock in the ware-room which he refers to?

A. I was not present when Mr. Gruesser himself made any estimate of stock; I was present, and Mr. Alpaugh was present, when Mr. Mains came and made an offer to buy out some thirds printed ware that had been accumulating some time, and also a large amount of over-glazed decorated toilet sets were included in the contract.

Q. Did it include all the under-glazed printed ware on hand?

A. No, sir; it included all they considered inferior on hand?

Q. They had some that was good?

A. Yes, sir.

Q. What became of that?

A. There was quite a large quantity left on hand when we left.

Q. That was good?

A. Yes, sir; that was considered good ware; I went around the ware-room with Mr. Alpaugh to estimate that ware that Mr. Mains made an offer for; if I remember right, he offered them $3,000 for that ware, and Mr. Alpaugh asked me what I thought about it; I told him I didn't know, I would go around and look at the stock and form an estimate of it; I went around, and told Mr. Alpaugh that I thought it ought to sell for $5,000; there were several hundred over-glazed decorated toilet sets included in the amount of ware that Mr. Mains was expecting to buy; if I am not mistaken, Mr. Alpaugh told Mr. Mains he could have the goods, but he may have repented and told him he wanted $500 or $1,000 more; I don't recollect how much; Mr. Alpaugh would recollect; the goods were afterwards estimated, and the goods amounted to between $8,000 and $9,000; Mr. Mulford had lost the memorandum; I was quite interested in the transaction, and very well remember it; Mr. Mains offered them $3,000 for it; they were the dregs and refuse and accumulation of a lot of bad ware that had been accumulating probably for a year or two.

Q. It has been charged here that the defect in that printed ware was owing to your mixings of your body?

A. It could not be charged that, because they knew what

the imperial china body was; we always made it from the time we began; there was no change made; they knew that the imperial china body was not suitable for hotel use.

Q. (By Mr. Vroom)—Who knew?

A. Mr. Alpaugh knew they had shipped it, manufactured in hotel ware, to Boston, and had complaints of it.

Q. You say Mr. Alpaugh knew that?

A. Yes, sir; Mr. Alpaugh knew about it; Mr. Alpaugh and I had talked about it; when Mr. Alpaugh had insisted on my making the biscuit printed ware on the imperial china body, I said, "Mr. Alpaugh, you know when you are doing that you are deceiving the hotel trade, because you know our imperial china body will not stand their wear, that that ware is not suitable for that purpose."

Q. (Further direct)—For hotel?

A. For hotel uses; there is no ware manufactured in Trenton, excepting that made by the Greenwood Pottery, that will stand the usage for a hotel for as long as that ware they brought in that basket will stand and not come out in as bad shape.

Q. Does that ware they have produced here, marked as an exhibit, show bad usage, hard usage?

A. Most certainly it shows hard usage.

Q. Did you, at the time of entering their employment, or at any other time, suggest that they enter upon the manufacture of this printed ware?

A. No, sir; when they wanted to manufacture printed ware and several other kinds of ware, I told them we had plenty to do to run that pottery without; if I had tried to manufacture all the ware they wanted to, I should have made all the ware made by anybody and everybody.

Q. Did you ever make any guarantee that the ware would be successful?

A. No, sir; they never asked me to; the first I ever heard talk of guarantees, from either myself or Mr. Barlow, to them, was when this case commenced.

Q. You never did make any guarantees or suggestions in the nature of a guarantee, at any time while you were there?

A. No, sir; and not to any other manufacturer; it is a very unusual thing to ask a practical man to do that; there

are so many things might happen to make bad ware that he has no control over them.

Q. There is another kind of ware that has been spoken of, "bone china;" tell us about that, and how you came to make that.

A. The first that I remember hearing of bone china was from Mr. Donoher; he was a great man on trying to get in amongst the fancy trade, and he asked me one day if I had had any experience in making bone china; I told him that I had made a small quantity of it one time, a few years ago, and I was quite pleased with it—it came out very well; he asked me if I would make him a sample or two of it; I did so, and he was very much pleased with it; took it to Boston, and the people there were very much pleased with it; Mr. Alpaugh and Mr. Magowan were very much pleased with it; and they discovered that they could sell it, and asked me if I could not manufacture it in quantities; I told them that I had never done so; I had never had any experience that way; I simply had the knowledge of knowing how to mix the body and the glaze; that it was usual to make it in separate departments or separate potteries, and I didn't know that we could make it a success with our regular ware; but I told them that Mr. Brunt, our foreman, had had considerable experience in manufacturing bone china; I thought he had filled a position as manager at a bone china pottery in England, and he might know how to bring it through the shops to advantage; and Mr. Magowan seemed very much pleased that Mr. Brunt had had experience that way, and told me to make a little bit of it—told me to get some bone from Golding's and make some; I ordered two tons of bone from Golding's, and made a batch of bone china in ornaments; when they say that that china was a failure and that it didn't come out good, they don't certainly mean what they say; I never saw men more pleased in my life, with a production of ware, than they were with that; Mr. Magowan almost danced a jig when he first saw the ware and held it up to the light; I believe we have a sample of that in court now.

Q. Just produce it.

A. I challenge either Mr. Magowan or Mr. Alpaugh to produce a piece of ware made anywhere in the world that is superior to it.

Q. (Specimens produced.) Is that some that you made?

A. I mixed the body and the glaze of that; Mr. Barlow did the modeling; Mr. Brunt attended to its going through the work-shop and gloss, and in fact, he manufactured it, I have no doubt did the workmanship for that piece of ware.

Q. How much of that did you make?

A. We bought, altogether, I believe, four tons of bone from Mr. Golding; that would form a large proportion of the mixture of the body; there was some of it left, I don't know how much; probably three tons, or two or three tons of the bone used up entirely; I don't know; there was some left on hand.

Q. What became of it?

A. I don't know; the bone that we had was left there.

Q. But I mean the ware that was produced?

A. We first commenced to manufacture this ornamental ware, such as these pieces you have here, and it was so much admired by a great many people that Mr. Alpaugh discovered we had large quantities carried away from the ware-rooms; we had to lock it up, everybody wanted to carry it away. At one time he gave me instructions to have a room at the lower end of the ware-room locked up and lose the key, for Mr. Magowan, himself, was very fond of these things and used to carry a good deal away; he said he should charge him for it. He thought we had better stop manufacturing ornaments for a time, as he thought, on account of its being carried away so much that it didn't pay. During the time we were manufacturing the ornamental ware Mr. Donoher conceived the idea of taking some of the ware in teas to be sold with dinner sets; we commenced manufacturing that also, and we manufactured the ornaments and teas successfully; they were in the process of being manufactured when we left there. They were a success all through beyond our expectations, and beyond everybody's expectations around there. The workmen all knew of it; it was talked of all over; no one had ever produced anything like that in this country before, and every one who

understood it said it was a success. We left things in shape to continue manufacturing of that kind when we left. The first lot of goods shipped away to French & Co., just before we left them, was this kind.

Q. (By Mr. Vroom)—What kind?

A. These.

Q. Of this ware?

A. Yes, sir.

Q. (Further direct)—How much?

A. Probably 150 dozen; they said $400 or $500, I believe they said yesterday.

Q. Why was the manufacture stopped?

A. It was not stopped.

Q. It was not stopped?

A. No, sir; the manufacture of bone china was not stopped; we expected to continue with it; we had not manufactured goods enough to complete French's order; if we had stayed there we expected to go on with it. They claim that there was a large amount of money expended for the manufacture of bone china. That is all wrong.

Q. What was the disbursements connected with that?

A. In the first place there were only a very few pieces of ware modeled, it would not certainly be over a week's work for a modeler, all told, and we made a few samples of what we call cranks, to fire the saucers in, in biscuit; I should not think it cost more than $5 or $10 for the whole operation of making those cranks—the other things we used were the regular saggers we had around the pottery that we used for other ware; I should not think there was over $100 paid out for labor; I cannot speak correctly, but I should not think there was over $100 paid out for the labor of making that bone china ware, all told, the ornaments and everything else.

Q. Was there a new kiln built for it?

A. No, sir.

Q. What was the new kiln built for?

A. The new kiln was built for firing ware that was made in under-glaze colors on the gloss; it was also used for firing under-glazed biscuit ware, and also for firing bone china;

that kiln was built before ever we thought of making underglazed biscuit ware.

Q. That was the kiln that has since been torn down?

A. Yes, sir; it was a very useful little kiln, and I think they made a mistake in tearing it down.

Q. During the whole time you were there did you devote your whole time, skill and attention to the business of that concern?

A. Yes, sir; I did; I devoted all my days and a good deal of the nights, and very often Sundays; I devoted a great deal of time to doing things that I was not compelled to do according to my agreement.

Q. What was the condition of the pottery when you left it from what it was when you entered upon the discharge of your duties there—the general condition?

A. The pottery was in very much better repair, and—[Interrupted].

Q. As to order?

A. The stock of ware on hand, if you mean that—[Interrupted].

Q. Mr. Alpaugh referred to things being out of shape and in bad order; that is what I refer to.

A. So far as the manufacturing department is concerned, it was in very good order all through; the decorating department was run on a very strict system, and the workshops, the manufacturing parts at all events, were very well conducted, as we can prove and shall do.

Q. Was there any complaints ever made to you of your neglecting your duties in any way?

A. No, sir; they always spoke to the contrary to me; they always gave me credit for having done my duty, and done more than they expected from me; Mr. Magowan frequently flattered me very much that way, and treated me very well, and made me feel good over it; I remember one time I went with him to New York, and he treated me like a prince; took me in a palace car, and entertained me in the highest way possible, and dined me at the leading restaurant there, Delmonico's and introduced me to the trade in a way I felt very much pleased with; Mr. Alpaugh has

done the same, although he didn't take me in a palace car; I am very much obliged to him for it.

Q. Did they ever make any complaints to you about unskillful mixings?

A. No, sir; just before my going away Mr. Alpaugh wanted me to leave my mixings; that they were very much satisfied with them, and didn't want to make any change, and when they were negotiating with James Barlow to stay, and they expected him to continue my mixings.

Q. Any complaints about your buying unnecessary materials?

A. No, sir; they never complained about my judgment in buying materials, but always seemed to have full confidence, and said they believed I brought them in to their best advantage.

Q. Did they ever give you notice to leave?

A. No, sir.

Q. Prior to when you did leave?

A. No, sir; they refused to let me leave several times when I wanted to.

Q. Do you recollect wanting to leave on one occasion?

A. Yes, sir; I recollect mentioning to Mr. Alpaugh that I had an offer to go in with John Taylor—that Mr. Cook and he had parted. I mentioned to Mr. Alpaugh the offer, and said that I would like to take it—that it was an opportunity of a lifetime; Mr. Cook told me that he had been talking to Mr. Taylor, and if I wanted, the opportunity was there for me to take the pottery; I could take one-half or one-third, whatever I wanted. Mr. Alpaugh said we had gone into the agreement together, and we must live it out together; he didn't want us to part. We were just down by the lower elevator.

Q. He refused to release you?

A. Yes, sir.

Q. When was that?

A. I think that was in 1885—the summer of 1885—I am not quite sure about the date. After Mr. Taylor had made arrangements with Mr. Pope and the man who has now got charge of the pottery, Mr. Magowan told me and Mr. Barlow Mr. Taylor had been talking to him about my taking

charge of the pottery—going in with him—and he had told him that he didn't want—that myself and Mr. Barlow had entered into an agreement with them, and he didn't want to part with either of us; they wanted us to stay with them.

Q. What was said to you about making any other agreement, in December, 1885?

A. In December, 1885—the first I heard of that Mr. Barlow came to me and said that Mr. Magowan had sent for him in the office, and made some reference about wanting us to guarantee to produce ware at a certain cost, percentage on the selling price, and that they wanted to see me in the office. I went in the office and had a separate interview, Mr. Barlow was not there—I think Mr. Barlow was not there—I am not sure about that.

Q. Give me the best of your recollection.

A. At the first interview I think Mr. Barlow was there; I had an intereiew with them afterwards when Mr. Barlow was not there Mr. Magowan said that he had been making inquiries from some of the other potters, and he found the ware was only costing them about 32 to 33 per cent. of the selling price, to produce in the ware-room, and he wanted Mr. Barlow and myself to sign an agreement that we would produce it at the same rate; he stated that he had been to the East Trenton Pottery Company, and Mr. James Moses, I believe he said, that is two of the potters he made inquiries of. We said we could not sign any agreement to that effect; I afterwards made inquiries of the East Trenton Pottery Co. if they had given—(Interrupted).

Q. Well, I don't care about that.

A. All right.

Q. You refused to execute a new agreement?

A. Yes, sir; at that time.

Q. After that, was this notice served on you that has been put in evidence here?

A. No, sir; after that Mr. Magowan had another interview with me, and tried to persuade me to sign this agreement. We had quite a prolonged talk there, and I told him it was very evident to me that his asking and trying to get us to sign another agreement was to destroy the effect of the one we had already signed, and I should not do it; and I

said, "Mr. Magowan, after our present agreement expires I shall not work for you any longer; you can take notice from now—it is a long notice—that that will end our connection together; I shall not continue in your service."

Q. Was the agreement he wanted you to sign looking to a longer term of your continuing the thing?

A. It was simply an agreement that we would guarantee to produce ware at a certain percentage of its cost, about 32 per cent. or 33 per cent. of its net value.

Q. There was no reference to the time?

A. No reference to the time as far as I was concerned.

Q. And after that was the notice which has been put in evidence here served upon you?

A. Mr. Magowan wanted certain rules carried out, wanted to make some changes in the pottery, and I told him whatever changes he wanted to make, so far as I was concerned I was perfectly willing to carry them out, and if he would give his instructions, why we would carry them out. We then received those type-written instructions that I suppose you have reference to.

The Vice-Chancellor—Will you let the witness tell when this interview was? I think he did tell—[Interrupted].

Mr. Aitkin—I think he said December, 1885.

Witness—I think it was in November or December, 1885. The date of the written instructions would show about when the interview took place; we received the paper the day after, I believe. There was some changes made in mine and Barlow's duties.

Mr. Aitkin—The instructions are dated November 5th.

Q. (By the Vice-Chancellor)—The printed instructions came the day after?

A. Yes, sir.

Mr. Aitkin—And they are dated November 5th, too.

Witness—I complained to Mr. Alpaugh and Mr. Magowan during that interview, that my duties were too heavy for me, that I had too much to do,

that I was doing more than—a great deal more than any other man they could mention in Trenton; I was doing all the mixing, superintending the manufacturing part of the pottery generally, taking entire charge of the decorating shop that some men around Trenton were receiving $50 a week for; there was no other practical decorator there, simply a boy to help me get up the orders I had; I had charge of shipping the decorated goods, and the shipping room, and I had to keep running to the office to give prices, everything of that kind; they all had to refer to me; I probably had to go down twenty or thirty times a day; they had no other source from which they could get the prices; it was running me almost to death; that I ought to be relieved from some of my duties; that it would be only proper to let Mr. Barlow come out and relieve me some; from that time they made some changes in our positions, letting Mr. Barlow come and relieve me from some of my duties. When they try to claim the price they paid me for my services was large, they make a mistake.

Q. Reference was made to your hiring Mr. Kirkham, and paying an extravagant price; tell how he was employed.

A. I employed him; when I first went there we wanted a fireman, one of the Coxon's did the firing himself, and we needed another fireman; I consulted Alpaugh and Magowan, if they preferred to have anybody; they said no; they left it entirely with myself and Mr. Barlow, and we said we would like to secure the services of Mr. Jacob Wildblood, who was then firing for Burroughs & Mountford, and also superintending the firing for Mr. Moses at that time; we visited Wildblood at the time, and he refused to come with us; we offered him $25 a week; he refused to come with us, he said that would not be sufficient inducement.

Q. He refused to come at $25 a week?

A. Yes, sir.

Q. What did you do then?

A. We then saw the next best man we thought of in Trenton, Mr. James Kirkham, the one you spoke of.

Q. You employed him at what wages?

A. We employed him at $21 a week; after he had been there for several months he found that—he got dissatisfied with the amount of work he was doing for the money, and he thought he was not paid enough, and he made an arrangement with Mr. Magowan; in fact, Mr. Magowan had an agreement drawn up, which was signed for three years by Mr. Magowan and Mr. Kirkham, in my presence.

Objected to as incompetent.

Q. Was there afterwards an agreement drawn up and signed that you know of?

A. It was signed in my presence, giving Mr. Kirkham $25 a week to act as foreman and superintendent of the sheds.

Q. (By Mr. Vroom)—Was that drawn by you?

A. No, sir; the original agreement was drawn by you.

Q. No, it wasn't.

A. Yes, it was.

Mr. Vroom—Produce the agreement.

Mr. Aitkin—I have never seen it.

Witness—There was only one copy of that agreement, it was locked in the safe at the pottery.

Q. (Further direct)—You had a man by the name of Joseph Finney.

A. Yes, sir.

Q. What kind of a man was he?

A. A very steady, sober man, competent and capable of doing his work in the department he was employed in.

Q. Was he paid an extravagant price for his services?

A. The largest pay he ever got was $2 per day; when Mr. Finney was employed we were suffering for a man that knew how to select ware in the decorating department, and Mr. Alpaugh asked me if I knew where such a man could be engaged; just about that time we had received a letter in our family from Joseph Finney, who was then in England, and I knew he had had a lifetime experience in that department, and he wanted to come to this country.

Q. The result of it was you employed him because you considered him a proper person?

A. Yes, sir; because we considered him a proper person, capable; the most he ever got was $2 a day; he is now employed at the Union Pottery.

Q. Was your management ever interfered with by Mr. Alpaugh or Mr. Magowan in any way?

A. How do you mean?

Q. In any way, stopping your work or talking to you?

A. Oh, yes; after we made arrangements to run the pottery, and had given notice to the hands to come to work Monday morning, for instance, very frequently Mr. Magowan would come in and change the arrangements.

Q. When was that?

A. That happened frequently; that happened about the first of the year 1884, for the first time.

Q. What took place then?

A. Why, myself and Mr. Barlow and Alpaugh made arrangements to continue running the pottery after stock was taken, and after the hands had been notified to come to work Mr. Magowan came in and had the orders countermanded; we felt very sore about it, as the hands thought there was something wrong; I believe the orders were given on Monday morning, after the men had got to the pottery to commence the work.

Q. Was anything ever said to you about buying out the pottery, and what was said?

A. By whom?

Q. By either Magowan or Alpaugh, to you.

The Vice-Chancellor—Why do you raise that question?

Mr. Aitkin—It will appear by the testimony what their conversation was with him; this was in regard to his ability. I do it to meet the allegation that they were dissatisfied with him and gave him notice to leave, and to show by that conversation they had a different opinion of him.

The Vice-Chancellor—It may throw some light on it.

A. In the summer of 1885, I believe it was in the hot months, Mr. Magowan sent for me in the office, and he said that he understood from me that my intention was to get in

business; I told him that that had been my intention, and he said that he would like to sell out the pottery to me, providing I could get a capitalist to go in with me, and he asked me if I knew any one that would be likely to do so; I told him that I didn't; he then himself suggested that he thought, he felt sure, from what he had heard, that Mr. Jonathan Steward, a neighbor of his, thought very well of me, as he had heard him speak of me, and if I was to consult with him, he thought it likely that he might invest money there with me; I told him that my acquaintance with Mr. Steward was very slight, indeed all I had had to do with him was in purchasing a few lots from him at one time, and that he would not think very favorably of me.

Q. Keep to the subject matter of the purchasing of the pottery.

A. He told me he thought if I would see Mr. Steward, Mr. Steward might invest money; I told him my acquaintance with Mr. Steward was not sufficient to warrant my going to see him; he then suggested Mr. Moses might invest money, as he thought Mr. Moses and I were very good friends, and he thought a good deal of me; I told him I didn't feel like asking Mr. Moses; in fact, I didn't feel at that time like taking the whole pottery; he said he should have every confidence in leaving a large part of the money in my hands, because he felt sure I could run it successfully; I asked him if his object in wanting to sell it out to me was because they were not making money; he said no, he believed they were making money.

Q. Is that all that occurred on this subject?

A. Well, there was some other little talk that I don't just remember.

Q. I don't care about it if it is immaterial. There is a question I should have asked you before—whether or no you consider the cost of running your department or Mr. Barlow's department while you were there excessively large in any way; whether you could have run it yourself more economically?

A. Unless you allow me to go into a lengthy explanation I cannot answer that.

The Vice-Chancellor—It is very easy for you to say whether, in your judgment, it was expensive or not. If the other side want an explanation they can get it. That is a very easy question for you to answer.

A. I don't think the expenses were large; I think they were as small as they might be at any other pottery; I thought you might have reference to where he mentioned their present outputs and expenses as compared with ours.

Q. Did you and Mr. Barlow work harmoniously together?

A. Yes, sir; always; we never disagreed in business matters at all.

Q. What occurred in March, 1886, at the time you left; state the way you left?

A. Mr. Magowan sent to me in the office and told me that they had decided to make a change in the management; that he felt sure that myself and Mr. Barlow didn't work harmoniously together, and that they had made arrangements; I don't know whether he said positively made arrangements or not; anyhow, they were negotiating with Mr. Barlow to continue on to manage the pottery for them, and they would pay me my salary to the expiration of my agreement, and then at that time would pay me the amount guaranteed in it, which was a little over $6,000; I asked them why they made the change; they said it was because they felt sure that, on account of myself and Mr. Barlow not agreeing, they could not introduce certain rules that they wanted to; that they wanted us to part with good feelings, to let all personal matters between us die out, and make no difference at all.

Q. Did they give any other reason?

A. I don't just distinctly remember.

Q. Did they say anything to you about whether they had any fault to find with you or your way?

A. They had no fault whatever to find with me; they said they were perfectly satisfied; that they were perfectly satisfied with my mixings, and wanted to continue them; after the talk Mr. Alpaugh came to me separately and asked me if Mr. Barlow knew my mixings; I told him not those we

were making then, that we had had to make some changes. He asked me if I would give them to him; I said no.

Q. What did they say about having made arrangements with Mr. Barlow?

A. That is what they said; they said they made arrangements with Mr. Barlow, or were negotiating with him, and expected him to stay on to manage the pottery; they said they would pay me my weekly salary just the same as if I was working through to the end of the term, to the expiration of my agreement.

Q. Was anything said about giving you checks for that?

A. Yes, sir; I believe they said they would give me checks dated ahead for the amount of the salary due me up to the date of the expiration of the agreement.

Q. Why didn't they do it?

A. They didn't do it because they failed to make arrangements with Mr. Barlow; Mr. Barlow refused to stay with them unless they would pay him all the money that was due him according to the agreement—the amount of profits guaranteed.

Q. What was the next thing you heard from them?

A. I heard so many things from them I don't know what you mean.

Q. Notice to quit?

A. That was notice to quit at that time.

Q. You received notice to quit at that time?

A. Yes, sir.

Q. Under the arrangement you have mentioned?

A. Under the arrangement I have mentioned; yes, sir.

Q. Did you hold yourself in readiness there to do the work?

A. Did I what?

Q. Hold yourself in readiness to continue your position?

A. After we had left there, I went and reported every morning until they told me they didn't want me.

Q. You didn't leave willingly?

A. I left at their own request.

Q. Was your salary paid to you regularly?

A. Well, it was paid, there was a small balance due, but not of any great account.

Q. Did they pay you any part of the profits of the concern?

A. No, sir.

Q. Did they ever give you anything to show for it?

A. Yes, sir.

Q. State what took place in connection with the profits.

A. At the end of the first year, after taking stock, myself and Mr. Barlow applied to Mr. Magowan and Mr. Alpaugh for the $2,000 that they had guaranteed to us in the agreement, we asked them to pay it to us; they said that they hoped we would not press them to pay the money, as they were only just having bought out the pottery; they had a large amount of money to pay, and were tight for money matters at that time, and they hoped we would let the money lay on and they would give us credit for it on the books, and a statement to that effect.

Q. Who said that?

A. Mr. Magowan. Mr. Barlow and I talked the matter over a little, and we thought as they were only just started in business, we would not want to cripple them in their efforts, and were willing to let the money lay; Mr. Magowan then called the book-keeper and gave him instructions to give us credit on the books for $2,000 each, and a statement showing that he had done so; the statement you have there.

Q. And the statements which have been produced here, and marked, were the statements given to you at that time?

A. Yes, sir.

Q. And the same thing occurred the year subsequent?

A. Yes, sir; but we were longer in getting the statements; Mr. Magowan didn't seem so willing to give them.

Q. What occurred in the year subsequent?

A. At the end of stock taking we again demanded from them the $2,000 in addition to the previous $2,000, which was due us from them, in money; they again pleaded their inability to pay on account of having so much money invested there, and had not been able to turn it around, and they hoped we would let it lay; we finally consented to do so again; we didn't feel disposed to cripple them.

Q. Was anything said about the profits they had made in the concern?

A. They didn't make any showing of profit or loss; they didn't give us any particulars of their business, excepting the first time stock was taken they showed a profit there of some two or three thousand dollars or something, I forget which, it was not very large; it was then at the end of the first six months, I think.

Q. Do you know anything about how that statement, showing these profits, was made up, and what was included in it?

A. I don't know anything about it.

Q. Did you at that time?

A. What, the $2,000?

Q. No, their statements of their profits; you say it was a little over $3,000 of the six months' business?

A. I had nothing at all to do with it, except to go around the bins, and counting the ware, and leaving a slip in the bins; the clerk from the office took a memorandum of that slip, that is the last I saw of it; it was all figured up in the office, and they have it in their books; we had nothing to do with it at all.

Q. Then, after the time expired, in July last, what effort did you make to get a settlement?

A. We made an effort to get a settlement with Mr. Magowan from March; we saw him almost daily from March to July, trying to get a settlement; he promised that he would pay us the $6,000 which was due us at the date of the expiration of our agreement; I was very anxious to have a settlement with him before that, because I wanted to get to manufacturing for myself, and as Mr. Barlow and they had broken off their agreement, an understanding they had with him, that he should continue after I left, he was anxious to make a similar arrangement, and made some concessions.

Q. State what efforts you made to make a settlement after July last; you are going back too much, I only ask you what you did in July; you say you went to Magowan—tell what took place between you and him then.

A. After July we saw Mr. Magowan, and he told us that his counsel, Mr. Vroom, had advised him not to pay us $6,000, but to take the risk, and we had better see our

counsel; I came and saw you, that is when this suit commenced.

Q. That was the last time you saw him?

A. That was after July.

Q. That was the last time—did you see him but once?

A. I saw him a great many times previous to that, previous to July.

Q. Just before July, had you made efforts to get a settlement with him?

A. Yes, sir; we had been going to see Mr. Magowan, according to appointment, about three months previous to that.

Q. It was then that he promised to pay you, at the expiration of the agreement, $6,000?

A. Yes; he promised to do that; and about the 7th of July he said that they were consulting with some high authority in the State to see if they would be compelled to pay it.

Q. When he promised to pay you the $6,000 at the expiration of the agreement, did you ask him to put that in writing, or to put it in checks or notes?

A. We made a proposition—you drew it up, I think—that was made to them, which Mr. Magowan said it was perfectly agreeable to him, and if Mr. Vroom was willing, if he didn't advise him to the contrary, he would pay it; he would pay us the $6,000, and these checks came payable at intervals, about thirty days apart.

Q. Did he ever make any objection to paying the $6,000 prior to the time you saw him last, after July?

A. No, sir; he always acknowledged that he would pay it—that it was due us.

Cross-examination (by Mr. Vroom)—

Q. Did I understand you to say that you had twenty years' experience as a manager of potteries, in England and this country?

A. Together, yes, sir; foreman and manager.

Q. What potteries did you manage in England?

A. I didn't manage any pottery in England; I was foreman in England, and manager in this country.

Q. Where were you foreman in England?

A. John Dunick & Co., Albion Works, Hanley; the same pottery that Mr. Barlow was employed in, in England.

Q. What class of ware did they make?

A. Printed and decorated ware largely.

Q. Printing under-glazed?

A. Printing under-glazed, mostly.

Q. Over-glazed?

A. Not much over-glaze.

Q. In fact, the greater part of the printing in England is under-glazed, is it not?

A. Largely; yes, sir.

Q. Were you brought up to the potter's trade there in England?

A. Yes, sir; I was born right in the house on a pottery, and have been there ever since.

Q. But did you learn the trade of a potter there in England—go right into a pottery as a boy, and learn the trade?

A. Oh, yes; I went to work in a pottery when I was a little over seven years old.

Q. And worked in every department?

A. Yes, sir; a great many departments that boys have to work at.

Q. Did you learn the branch of the trade known as printing on the glaze, there?

A. As a practical printerman?

Q. Yes.

A. No, sir.

Q. Have you ever worked among it?

A. I never worked as a printerman, but always have been amongst it.

Q. Do you know how long the printing on the biscuit has been in use in the potteries?

A. I cannot speak positively, but a good many years before I was born.

Q. I ask you if you knew at all, or where it was first used?

A. I have read about it, but cannot state.

Q. You don't know whether it was English or French, the invention?

A. I cannot remember.

Q. You cannot remember who was the first one that put print either upon the biscuit or glaze?

A. No, sir; I have no recollection; I have read of those things, but forget.

Q. While you were in England, you had no experience at all of printing, practically, either upon the biscuit or upon the glaze?

A. I had had some experience in preparing the colors and the oils, and getting those materials ready for the workmen to use.

Q. But you had never done any of the work yourself, that is, printing?

A. No, sir; I had never worked as a printer at all.

Q. What year was it you came to this country?

A. 1869.

Q. Did you come right to Trenton?

A. Yes, sir.

Q. Where did you first work?

A. At the Mercer Pottery.

Q. How long did you work at the Mercer Pottery?

A. I think it was about six years; a little over six years.

Q. In what capacity?

A. I was manager.

Q. For whom?

A. For Joseph G. Brearley and John L. Thompson, previous to James Moses coming there, and about one year with James Moses.

Q. Were you the manager of the Mercer Pottery up to the time Moses took charge of it?

A. Yes, sir.

Q. Did that pottery fail?

A. No, sir.

Q. It didn't fail?

A. No, sir.

Q. It was not sold out?

A. It was sold out, but it didn't fail; the year previous to their selling out will show a profit of $12,000 on their books.

Q. I don't know anything about that.

A. Well, you asked me.

Q. I only asked that simple question, whether they failed or not?

A. No, sir; Joseph G. Brearley died, and the interest had to be sold out.

Q. When you left the Mercer Pottery, where did you go?

A. Mr. Cook, at the East Trenton, made me an offer and I went with him.

Q. Did you continue a year with Mr. Moses?

A. Yes, sir; about a year; I left on my own account.

Q. Then you went with Mr. Cook and remained there until you went with Alpaugh & Magowan?

A. Yes, sir; he made me an offer and I went with him, and remained there until I went with Alpaugh & Magowan.

Q. Are you certain that you did not meet Mr. Magowan first upon the street and talk about this matter?

A. Quite sure; the first time I ever saw Mr. Magowan in my life was at my house one dark night when he drove up there.

Q. How do you recollect the matter of a dark night, what fixes that in your mind?

A. I remember that when I went to the fence I could hardly see his wagon, it was so dark.

Q. Had you never seen him before that?

A. I do not recollect having seen him or spoken to him.

Q. What did he come for?

A. To engage my services, as well as to persuade me to try and persuade Mr. Barlow to go with them.

Q. Did you not, at that first interview with Mr. Magowan, say that Mr. Barlow would not connect himself with their pottery unless you went there also?

A. No, sir; I did not; no such thing ever took place.

Q. Did you not, when you had that first interview with Mr. Magowan, know just what kind of a plant they had?

A. No, sir; I have never been at the pottery.

Q. Did you not tell him—[Interrupted]—

A. No, sir.

Q. That you understood that pottery and the capabilities of it?

A. No, sir.

Q. The capacity?

A. No, sir.

Q. Did you not state to him at that interview that if you left the East Trenton Pottery you would have to be paid well by him?

A. I have no recollection of saying that.

Q. Are you certain you did not say that?

A. I do not recollect ever saying it.

Q. Did not Mr. Magowan then tell you the amount of business they had done at that pottery?

A. Mr. Magowan said how much business they had been doing there, I think; yes, sir.

Q. Now, taking the amount of business that he stated to you as having been done there at the pottery at that time, did you not say to him the amount of profit you could make if you went there?

A. No, sir; he was the only man that talked about profit that could be made.

Q. Do you mean to state, then, that you did not state in any way to Mr. Magowan in that interview anything in reference to the amount of profit you could make at that pottery if you went there?

A. I have no recollection of anything of that kind being said at all.

Q. Nothing of the kind?

A. Nothing at all.

Q. Did you not at that very interview at your house make a proposition to Mr. Magowan that if he would take Mr. Barlow with you that you would go there for $3,000 a year and 10 per cent. of the profits?

A. No, sir; Mr. Magowan did all the proposing, I didn't do any.

Q. You mean to be understood that at this interview you made no proposition whatever to him?

A. I mean it to be understood that way.

Q. That you never said a word to him as to what profits could be made or what you could produce at the pottery at all?

A. I have no recollection of anything being said of that

kind on my part at all; Mr. Magowan talked that way, but I did not.

Q. Did you not state to him any specialties that you could make in the way of pottery?

A. No, sir.

Q. Do you want us to understand that you did not mention anything in regard to your capacity as a potter?

A. I want you to distinctly understand that; yes, sir.

Q. That is just it exactly; you stated nothing as to your capacity?

A. No, sir.

Q. Did you not state to him that you were able to make porcelain?

A. No, sir.

Q. Didn't you state to him that you were able to make vitrified china?

A. No, sir; those things were not talked about.

Q. And was nothing said about imperial china at all?

A. Nothing at all.

Q. Then will you have us to understand that he came there and had this conversation with you in reference to your going to the pottery, and nothing was said by you at all in reference to the grade of ware you could produce, or the manufacture of ware on your part at all?

A. Nothing at all was said; if you will allow me to explain I will do so.

Q. I do not desire any explanation; did you not state to him at that interview, while alluding to the subject of vitrified china, that none had been made in this country at all that was reliable?

A. Vitrified china was never mentioned at all.

Q. Did you not, at that interview, produce and show to Mr. Magowan a piece of vitrified china that you had made?

A. No, sir; I did not have a piece in my house; I did not have any that I had made.

Q. A piece from a toilet set you produced and showed him?

A. No, sir; I never had such a toilet set; I never owned one.

Q. Did you not then at that interview introduce the subject—(Interrupted)—

A. No, sir.

Q. (Continuing)—of—just wait until I ask the question.

A. I though you were through.

Q. Did you not introduce the subject of under-glazed decorated goods?

A. No, sir.

Q. Did you not have quite a conversation with Mr. Magowan on that point?

A. No, sir; there was nothing said on that point.

Q. Nothing said at all on that point?

A. No, sir; nothing at all.

Q. When was the next conversation you had with him?

A. The second conversation I had with Mr. Magowan I believe was on the night after.

Q. Where was that?

A. At my house.

Q. How long did that last?

A. I don't know; probably not very long; half an hour, probably.

Q. Was anything said on the subject of the manufacture of ware at that time?

A. Yes, sir.

Q. Did you state anything to him relative to what you would or could do?

A. No, sir.

Q. You did not?

A. No, sir.

Q. Who did make any statements in reference to it?

A. Mr. Magowan talked about the quality of the ware which had been manufactured by the Coxon Company?

Q. And that it was what?

A. Worthless.

Q. What did he desire to be done there?

A. He said himself and Mr. Alpaugh should not continue manufacturing that kind of ware, and had decided to make a change.

Q. Did he state what kind of ware they wanted to have manufactured?

A. A similar kind of ware to that made by James Moses, at the Mercer Pottery.

Q. Did you state you were able to make that kind of ware?

A. He didn't ask me any questions about what I was able to make.

Q. Did you state anything about that?

A. I don't remember anything about it; he knew very well.

Q. I ask you what you said?

A. He asked me no questions about my ability?

Q. And you said nothing about your ability?

A. No, sir.

Q. Then, during those two interviews, which were the only interviews which you had with Mr. Magowan, nothing passed your lips in reference to your capacity as a potter at all?

A. Nothing at all; he said he had made inquiries about me and was satisfied.

Q. I want to know what you said in reference to it?

A. I said nothing at all about it.

Q. About what you were able to do?

A. No, sir.

Q. When did you next see Mr. Magowan?

A. The next interview was at my house on the Sunday afternoon following, I believe.

Q. Who were present then?

A. James Barlow, Mr. Magowan and myself.

Q. How long did that interview continue?

A. Probably—I do not know—I do not remember; an hour or two, likely; it might be an hour, or an hour and a half.

Q. During that interview was anything said in reference to the grade of goods he was expecting to have manufactured at that pottery?

A. Not to my knowledge; no, sir; I do not remember.

Q. Do not remember?

A. No, sir.

Q. Was anything there said by either you or Mr. Barlow as to the quality of goods you would make?

A. I have no recollection of anything of that kind being said.

Q. Was anything said as to why he wanted to employ you?

A. I dont remember him saying why he wanted to employ us, as he had told us that before.

Q. He had not seen Mr. Barlow before in your presence?

A. Not in my presence.

Q. Well, I am only talking about that; then you do not know. There was nothing said at that time, by either you or Mr. Barlow, with reference to the quality of the goods you were to make, or could make, if you went into their employ at the Empire Pottery?

A. No, sir; I do not remember anything of that kind being said.

Q. Nothing at all?

A. Yes, sir.

Q. Did not Mr. Magowan mention to you the kind of goods he wanted to be made there?

A. I do not remember exactly all that was said; there was a general understanding we should make what was called American porcelain. We understood that; how it came about I do not remember.

Q. Did you say anything about your ability to make it?

A. No, sir.

Q. Did you say to him you could make it?

A. I probably said to him that I was making it at the East Trenton Pottery at that time.

Q. Was anything said about vitrified china?

A. No, sir; nothing at all at that time.

Q. Was there no conversation had about imperial china?

A. No further than he knew I was making that kind of ware at the East Trenton Pottery.

Q. That is what you referred to as American porcelain?

A. Yes, sir; it has different names—some call it stone porcelain, some imperial china.

Q. Didn't you state your ability to manufacture what you call American porcelain?

A. I didn't say anything about my ability.

Q. Did you not tell him you could make it?

A. I did not say anything of the kind.

Q. You said nothing about your capacity to manufacture any kind of ware?

A. He never questioned me on that subject.

Q. Then you say you did not at this interview, or in all the proceedings, once state anything to him in reference to your capacity to make any kind of ware for him?

A. I have no recollection of stating that at all.

Q. When was anything said about the agreement?

A. At our first interview.

Q. Was that at the first interview, or the second or the third?

A. At the first interview Mr. Magowan talked about an agreement; the agreement was talked about at every interview that we had with him until it was signed.

Q. When was it agreed that the agreement should be prepared, at what interview?

A. At our interview—it was finally agreed at our interview on Sunday.

Q. It was then agreed that there should be an agreement made; of what character and effect?

A. It was finally decided that we should have the agreement drawn, by our attorney, on Sunday afternoon; it had been understood at the previous meetings that the agreement should be drawn up, and at our second meeting he said I might have the agreements drawn by myself, by my own lawyer.

Q. Did you have those agreements prepared?

A. Yes, sir.

Q. When?

A. On the 7th of May.

Q. When did you next meet Mr. Magowan?

A. On the same day.

Q. You met him that same day; whereabouts?

A. At the Trenton Rubber Works.

Q. Who was present?

A. Mr. Alpaugh, Mr. Magowan, Mr. Barlow, and myself.

Q. Who read the agreement?

A. Mr. Magowan.

Q. Don't you know that when Mr. Magowan came to the clause of the guarantee of $2,000 that he stopped reading the agreement, and said that was not in accordance with the understanding?

A. No, sir; he didn't stop; he said the agreement was just according to our understanding.

Q. Did not Mr. Alpaugh then at once say he never understood anything of the character was to go into the agreement?

A. No, sir.

Q. Did he not object to the agreement?

A. No, sir; they did not, either one of them.

Q. Did not either one of them object to it at all?

A. No, sir; they did not.

Q. Did not Mr. Alpaugh ask you as to your ability in the manufacture of the different kinds of ware?

A. No, sir.

Q. Did he not ask you anything about your capability or capacity as a potter?

A. No, sir.

Q. That was the first time you had seen him, was it not?

A. That was the first time I had seen Mr. Alpaugh.

Q. The first time he had known you, as far as you knew?

A. As far as I knew; he must have known me from reputation and known my ability.

Q. I don't know as he must or not. I want to know whether you stated anything at that interview at all in reference to your capacity as a potter?

A. They asked me nothing, and I made no statement.

Q. Mr. Alpaugh has sworn here that, at that interview, he asked you whether you were fully acquainted with all the matters connected with a pottery, and you stated that you were. Did he ask you any questions like that?

A. No, sir; Mr. Alpaugh did not tell the truth when he stated that.

Q. Mr. Alpaugh and Mr. Magowan both stated in their testimony that the $2,000 guarantee which you had inserted in the agreement was not part of the agreement as they understood it. Is that true or not?

A. It is not true.

Q. Then you will have us understand that nothing was said, at that interview, as to what you could or would do as a potter.

A. Nothing was said.

Q. Or as to Mr. Barlow?

A. There was some talk about Mr. Barlow's modeling, that is all; what shapes he had got out and could get out, that was all.

Q. But as a potter, there was nothing else said than that?

A. No, sir.

Q. You stated on your direct examination that you declined to make any guarantee?

A. I never was asked to made any.

Q. How could you have declined if you were never asked to make it?

A. Well, I did decline on one occasion, on the 5th of November, according to this date, to guarantee to produce ware in the warerooms, at a certain percentage of the cost of the net value of the ware; that is the only time I remember declining or the question being asked.

Q. Then you mean to be understood that is only applicable to the 5th of November, that that was the only time you were ever asked to guarantee your ware?

A. If I made any such statement, it was an error, that referred to another time; I never heard any mention of any guarantee of ware made by anybody at all.

Q. How long were you present at the rubber works that day altogether?

A. Oh, I don't recollect exactly; probably an hour, it might be more, it might be less; I don't know.

Q. Was there any conversation in reference to the management of the works?

A. I don't distinctly remember anything being said about the management of the works.

Q. Any conversation in reference to the quality of the goods to be made?

A. No, sir; the most talk was about Coxon Company, and buying out their interest.

Q. You stated that you went in charge of the works some two weeks or a little over after the execution of this

agreement; when did you definitely fix upon the grade of ware that you were to make?

A. I don't know; it was generally understood that we should manufacture this porcelain ware, that is similar to the ware that is made at the Mercer Pottery and the East Trenton Pottery.

Q. When was that fixed upon?

A. I don't remember; it was generally understood all the time.

Q. Understood from the time of the conversation with Mr. Magowan?

A. I don't know.

Q. How could it be generally understood if it was not talked about?

A. Probably it was; I don't remember.

Q. Don't you know that it was talked about?

A. I don't remember that being mentioned at the time.

Q. Don't you know that it was mentioned before you entered into this agreement?

A. No, sir; I would not say; I don't know.

Q. Was it ever spoken of after you entered into this agreement?

A. That is the only kind of ware we did manufacture.

Q. I am asking you whether it was not spoken of then?

A. I cannot say what I don't know; it must have been talked about some time; I don't remember when.

Q. It must have been mentioned at some time. I want to know when you arrived at the determination to manufacture what you call this American porcelain?

A. I tell you I don't remember.

Q. You don't remember?

A. No, sir.

Q. How soon did you commence to manufacture it?

A. It was several months after we went with them.

Q. How many months?

A. As near as I can remember, it might be two; we might have some samples coming through in two or three months; it was quite some time before we made it in large quantities.

Q. Did you commence the manufacture of it without saying anything to Alpaugh or Magowan?

A. I don't know; they would expect us to show samples, I suppose.

Q. Why don't you answer my question?

A. I don't remember any conversation taking place about it.

Q. It had never been manufactured at that pottery before?

A. Yes, a similar kind of ware was made before.

Q. Called imperial china?

A. No, sir; it was not called by that name, but they made a toilet set in a similar kind of ware.

Q. Did they know you were about to undertake the manufacturing, generally, of this American porcelain for dinner-ware, &c.?

A. Yes, sir; that was the object in securing our services, I suppose.

Q. They did talk about it, then?

A. Yes, sir; they must have done so, but I don't remember where or how.

Q. Didn't they do so before you entered into the agreement?

A. They might have done so; I don't remember.

Q. When was it you stated to them you could make it?

A. I don't remember; I could have stated any time, if they had asked me, that I could make it.

Q. But you don't know if you ever did so say?

A. I don't remember when it was said.

Q. When did you get out the first kiln—do you recollect about that—of this imperial china, so called?

A. The first complete kiln, do you mean?

Q. Yes.

A. I cannot tell you; it would be a long time; it kept coming through in large quantities, along with the white granite and C. C. ware we were making; it would probably be a year before we would bring a complete kiln through.

Q. How long before it was put on the market?

A. That I cannot answer; as soon as Mr. Barlow got a complete dinner set modeled.

Q. That was the over-glazed decoration?

A. Yes, sir.

Q. Was it white or colored?

A. Both, I think.

Q. You say there was no crazing of any account, of that ware; were not complaints made about the great amount of crazing of this ware you manufactured?

A. No, sir.

Q. Were you not called by the firm to explain that?

A. No, sir; I have no recollection of any such thing.

Q. You have no recollection of anything of the kind?

A. No, sir.

Q. And no recollection of any complaints being made by them of crazing of that ware?

A. No, sir; I don't remember their making any complaints; I remember seeing some pieces of ware crazed at times, but never remember their complaining to me about large quantities of that ware crazing.

Q. Don't you remember the complaint that was made of the white table ware sent to Boston, to Abraham French & Co., and returned on the ground of crazing?

A. No, sir; I have no recollection of it.

Q. And that your attention was called to it?

A. No, sir; I don't remember.

Q. Don't you remember seeing these particular goods in the receiving-room when they came back?

A. No, sir; I don't remember it at all.

Q. Are you positive there was not a larger proportion of thirds made by you in this gloss than there should have been?

A. I feel positive there was not a larger proportion of thirds made out of this gloss by me. I feel very positive that there was a larger number of thirds made than ought to be, from improper selections, under Mr. Alpaugh's instructions, by selecting too closely.

Q. Who made the selections?

A. The man that had charge of the ware-room was employed by Mr. Alpaugh and worked under his instructions.

Q. Who was that?

A. Mr. Nevius was one.

Q. After he left, who was there?

A. There was a young man there that Mr. Donoher brought; I forget his name; then Mr. Gruesser came; there were a great many around there.

Q. You claimed the loss on the thirds was due altogether to the selecting?

A. Yes, sir; selecting too close.

Q. But you admit there was a large number of thirds produced from the kilns?

A. Yes, sir; I will give an explanation there, if you wish.

The Vice-Chancellor—On cross-examination the only way is to answer the question, and then stop; that is proper and better.

Q. When was it that Mr. Magowan spoke to you about Mr. Donoher being so very close in his selections?

A. He frequently made remarks of that kind.

Q. Can you mention any time?

A. Yes, sir; I remember one time very distinctly.

Q. When?

A. In the summer of 1885; let me correct that; I think it will be in September; you can call that summer, but it was later on than the summer.

Q. Late in the summer of 1885?

A. Yes, sir.

Q. You were manufacturing what at that time?

A. Ware generally, principally imperial china.

Q. Of what character, under-glazed printed?

A. Not much; no, sir; not very large quantities; there might be a little, I don't know.

Q. There might be a little of that?

A. Yes, sir.

Q. Do you know what his complaints were, that is Mr. Donoher's, relative to the selections?

A. Mr. Magowan?

Q. No, Mr. Donoher; he wanted the close selection made, why did he want that?

A. I heard him say once that, in order to sell goods to the large houses, to the fine class of trade he visited, he had to sell goods that were selected equally as well as the English goods, consequently his orders had to be selected closer than the orders sold to the ordinary trade.

Q. Is not that proper—to select them close in that way, so as to compete with the English trade?

A. No, sir; not unless they were sold as the best; his goods were sold at what is called run-of-kiln rates; if a man sells a bill of goods at the run-of-kiln price, and leaves the customer to understand he is to have the best selection, he is selling goods at a less price than he ought to; that, I think, is one of Mr. Donoher's failings as a salesman.

Q. You have spoken about the drawing of the first kiln of imperial china; the date, when was that, sir?

A. Well, I don't remember, speaking of the time.

Q. Just answer the question.

A. I don't know when it was.

Q. Was it three months, four months or six months after you went into their service?

A. We kept drawing it with our white granite and C. C. ware out of the same kiln, probably for three or four months, and then kept increasing the quantity of the imperial china and kept decreasing the white granite and C. C.

Q. Why do you recollect the drawing of the first kiln, and cannot recollect when it was?

A. It was the first kiln that contained any of the imperial china that I refer to; not a complete or whole kiln.

Q. Was this imperial china stamped?

A. It was stamped in the clay.

Q. From the very first?

A. I don't recollect whether our first productions were stamped or not; but shortly after we began to make it, we stamped it in the clay.

Q. Then you knew at the time that you were about to produce an article which was to be called the imperial china, did you not?

A. The name which we gave the ware was decided by a meeting of the firm.

Q. You were present at that?

A. Yes, sir.

Q. The question of the producing of the ware was then discussed, was it not?

A. I really don't remember; some of the ware must have

been produced when we were holding that meeting, because we were only deciding to give it a name.

Q. Did you then state anything as to your ability to produce it?

A. No, sir.

Q. Not at all?

A. No, sir; it was never necessary for me to state anything, they didn't ask me anything about it.

Q. You said that the imperial china which you made crazed less than the same class of goods made at other potteries?

A. I stated that I thought so.

Q. Did you state you thought so, or that it was so?

A. If I didn't say I thought so, I intended to.

Q. Have you ever made any comparison to enable you to form that conclusion?

A. No, I have had no opportunity of making any exact comparison; I just speak from the way the thing appeared to me.

Q. It is only, then, just an impression of yours, is it not?

A. Just the way the thing looked to me.

Q. Was there any of this that was returned to you as crazed, this white imperial china?

A. I don't remember, there might have been; there might be some; we have had some returned that crazed, of that kind of ware.

Q. Did you re-fire any of it?

A. It is likely we would re-fire it if any came back; I don't remember any particular occasion when any came back; if it did we would re-fire it.

Q. Do you remember taking the white ware from the bins of stock on hand and re-firing it?

A. I have no recollection of it.

Q. You have not?

A. Not taking the white ware; no, sir.

Q. When did you first hear Mr. Donoher refer to this vitrified china?

A. I am not sure about the date; I think it was sometime in 1884, somewhere, I think, in 1884; I am not particular;

I am speaking at random of these things; I don't remember exactly when he did mention it.

Q. Do you mean to say that Mr. Donoher had booked orders for that ware before receiving any assurances from you that that ware could be made in the pottery?

A. I mean to say that they told me so, and I blamed them for doing so.

Q That is a fact, as you state it, that they told you he had booked orders before you stated you could manufacture that ware?

A. That is what I understood from them.

Q. Had you not stated to Mr. Donoher, after showing a sample of vitrified ware, that you could produce just such ware as that?

A. No, sir.

Q. Why did you say that the attempt to make the vitrified hotel china at the Greenwood Pottery had failed?

A. Because they discontinued it, imperial china.

Q. No, vitrified china.

A. That was a mistake; I was meaning the ware similar to our imperial china; I meant that they failed to make it along with the other kind of goods they were making; they are making that successfully now. If it is written down that way, I should like to have it corrected.

Vice-Chancellor—No, that stands, and your correction, as you make it now stands.

Q. Then you do not mean to be understood that the vitrified hotel china cannot be made to pay for the manufacture of it?

A. Not if you make it alone; no, sir.

Q. You mean to say that the vitrified china must be made alone in order to make it in paying quantities and good quality?

A. I mean to say that I think so; yes, sir.

Q. That is your opinion?

A. Yes, sir; that is my opinion.

Q. Do you know of any potteries that make that alone, to the exclusion of all other ware?

A. I understand the Greenwood Pottery does.

Q. Do you know of your own knowledge that any pottery does that?

A. The Greenwood, I believe, does.

Q. I am asking for knowledge, not belief. Do you know of any pottery that devotes its entire establishment to the manufacture of that pottery, to the exclusion of everything else?

A. I don't know; I know the Greenwood Pottery makes it; that is the bulk of their production.

Q. Could not the production of the vitrified china have been carried on at the Empire Pottery?

A. Not the way we had it, without making separate work-shops for it.

Q. Didn't you state to the firm, after the first attempt you had made to produce the vitrified china, and admit you were unable to make it in paying quantities?

A. With the present facilities, perhaps I did.

Q. Did you ever suggest to them in any way that it was necessary for them to make new work-shops?

A. Yes, sir; both myself and Mr. Barlow told them.

Q. Kilns, did you suggest kilns, too?

A. No, sir.

Q. You never suggested new kilns?

A. It was not necessary to make new kilns; no, sir.

Q. When was it you suggested this about the new work-shops?

A. When we discontinued making it.

Q. Did they refuse to have the work-shops put up?

A. I believe Mr. Barlow was the man who made the suggestion about the work-shops.

Q. Did the firm refuse?

A. Yes, sir; I think they rather decided to discontinue making the ware than go to the expense of work-shops.

Q. Didn't you have control that was sufficient to enable you to go to any expense necessary to enable you to make that china, if you could make it?

A. No, sir; I never had any control to enable me to have new work-shops built.

Q. Do you mean to say you never ordered anything without consultation?

A. Never ordered any new buildings.

Q. Didn't you order repairs, &c.?

A. Yes, sir; when they were running down.

Q. Didn't you also order everything that was necessary to be put up that was essential in the manufacture you were carrying on?

A. Whenever there was any necessary changes to be made I always consulted with Mr. Alpaugh.

Q. Did they refuse to go to the expense of putting up work-shops to make this vitrified china?

A. Yes, sir; they refused on that account.

Q. About what time?

A. At the time we discontinued making it; I don't remember the time.

Q. Didn't you discontinue making it because you could not make it successfully?

A. No, sir; because it was not practical to make it along with the other ware.

Q. You said it could be made with the addition of the other work-shops?

A. If we made it in all different departments, and kept it separate all through, I believe it could have been made the same as other parties make it; there are two potteries in town making it already.

Q. You think that was undertaken before you commenced on the under-glaze ware?

A. Yes, sir; I think it was before we made biscuit printed ware on the under-glazed ware.

Q. Can you give me about the date you started it on the manufacture of this printing on the biscuit?

A. No, sir.

Q. How did you come to do it?

A. At the suggestion of Mr. Donoher; he saw it at Boston, at French's, and sent some samples from French's to the pottery.

Q. Was it any novelty?

A. Not to me.

Q. Was it to anybody connected with the pottery business?

A. It was a novelty to do it on very white body, the same as our imperial china.

Q. Do you mean to say that the body has anything to do with the printing?

A. Yes, sir.

Q. Do you mean to say they do not print, in England, on all kinds of body?

A. I cannot say; there is a very small amount done on white body; that is, on the biscuit.

Q. Do you mean to say they do not print on the biscuit of all classes of bodies in England?

A. I mean to say that bodies are made specially for printing on the biscuit.

Q. Do you mean that every kind of printing on the biscuit has a special body which differs from the body used from other kinds?

A. No, sir; not every kind; there may be exceptions, but as a rule they make a special body for printing on the biscuit.

Q. Is that done in every establishment?

A. I was only connected with one or two.

Q Don't you know that they can do all printing on the biscuit?

A. No, sir.

Q. Don't you know it can be done on any other body?

A. That is the best kind?

Q. Don't you know the best kind of porcelain can be done on the biscuit?

A. That is usually done on the glaze.

Q. Don't you know it can be done on the biscuit?

A. I think it could be done.

Q. Is it not a question of glaze altogether, as to the success of it?

A. Not entirely.

Q. Is it not the experience of the potter that it is a question of glaze?

A. I don't know what the experience of other potters is; you have to have the body and glaze work in unison.

Q. Didn't you state that the trouble was that the body in this case made the failure?

A. If they had allowed me to make a body suitable, I think I could have made a success.

Q. Who prevented you?

A. Mr. Alpaugh, Magowan and Donoher.

Q. What was the difference you wanted?

A. I should have made a stronger body and put in more ball clay, as Mr. Maddock stated they used.

Q. He stated they used ball clay a great deal?

A. We didn't use any.

Q. Hadn't you large quantities on hand?

A. Yes, sir; but they objected to the ware being damaged in color.

Q. Didn't you leave a lot there when you left?

A. We were using it at the time.

Q. Was there anything to prevent your using it?

A. In large quantities, yes, sir.

Q. Did Mr. Alpaugh prevent you using anything in your mixtures?

A. He prevented me hurting the color by using hard ball clay.

Q. Would ball clay have interferred with the color?

A. Yes, sir; it is a very bad color.

Q. Was ball clay the only clay you could have used to make that body?

A. That was the only clay that would give the body the qualities I would like to have.

Q. Do you mean to say that ball clay has to be used by all the different establishments in England that print on the biscuit?

A. I don't know.

Q. Do you mean to say that the Wedgewood establishment, for instance, when they print upon the biscuit, used for the purpose of making it a success ball clay or a common clay?

A. Yes, sir.

Q. Are you sure of that?

A. Yes, sir.

Q. Have you not seen the very finest of porcelain bodies used by the Wedgewood for the printing on the biscuit?

A. I believe all the fine ware is done on the glaze.

Q. Answer the questions.

A. I don't know; I have not seen it.

Q. Don't they make it?

A. I have not seen it.

Q. Have you seen the Worcester under-glazed printed ware?

A. I have seen the over-glaze.

Q. Have you not seen the under-glaze?

A. I could not tell.

Q. Don't you know in the Worcester shop they have for over a hundred years printed on the biscuit?

A. It is likely they have; I don't know; I never was at their establishment; I don't know.

Q. I have never been at it either; it seems to me you might, as an expert, know something about it.

A. I don't claim to be an expert; I only claim to be a practical potter.

Q. Then I take that back.

A. I am just a practical potter, that is all.

Q. Then would you distinguish to-day, if we took a piece of the Royal Worcester—say a piece that was one hundred years old—whether it was printed on the biscuit or glaze?

A. When a piece of ware has got a thick glaze on, and has been printed on the glaze, the glaze will hold the color when it fuses, so much that it is hard to tell whether it is printed on the biscuit or not; but if it is a very thin glaze, then I think it is easy to tell.

Q. You think it is easy to tell?

A. Yes, sir.

Q. But you are not able to tell us now whether you would be able to distinguish or not?

A. If I saw the piece of ware I might tell you more about it.

Q. You say that the trouble with this under-glazed printing was that the body was wrong; is that your opinion of it from an examination of it?

A. I stated that body was not suitable for biscuit printing or the purpose they sold it for.

Q. Do you mean to tell me the glaze was proper to put upon it?

A. The glaze I used was properly mixed, and as near as possible made to suit both body and color.

Q. Was the glaze suitable for under-glazed decorations?

A. Yes, sir.

Q. Had you ever used it before?

A. That glaze I used had been used many years before by experienced potters.

Q. Had you ever used it before?

A. Yes, sir.

Q. Where?

A. That glaze has been used in the old country by me.

Q. Whereabouts?

A. At John Dimick & Co.'s.

Q. Had you ever used it here?

A. Not in any great quantities; I had simply tried it on white ware to try the glaze.

Q. How came you to make this, solely because Mr. Donoher suggested it?

A. Yes, sir.

Q. Did you not state that Mr. Donoher suggested it, and that you were able to make it?

A. No, sir; I always said I was able to try.

Q. Did you not state you were able to do it after you tried?

A. No, sir.

Q. Do you mean to say they went to the expense of this matter clearly as an experiment?

A. They went into that solely on their own responsibility.

Q. Why?

A. Because they assumed the responsibility by not letting me make the body I wanted to.

Q. Did you not state the body on which you made the experiment was the proper body?

A. No, sir; I stated it was the imperial china body.

Q. Who insisted that the imperial china body should be taken for that?

A. Mr. Alpaugh.

Q. He was not a practical potter.

A. Well, they objected to having ware made that was not as white.

Q. Don't you know Mr. Alpaugh was not a practical potter?

A. I don't believe he is.

Q. You were a practical potter?

A. I claim to be.

Q. You were the superintendent of the establishment?

A. Yes, sir.

Q. In the agreement you were to have charge of all the manufacturing?

A. Yes, sir.

Q. Was it not your place, if a suggestion of that kind was made by one of that firm, which, as a practical potter, you knew was wrong, not to make it?

A. I did object to make it.

Q. When?

A. When they wanted me to make it.

Q. Who did you tell your objection to?

A. Alpaugh.

Q. Who else?

A. Mr. Magowan; I drove out to the rubber works and saw him one afternoon specially.

Q. When was that?

A. I think in the summer of 1884; I won't be sure about the date.

Q. How much had you made then?

A. Only small quantities, when I drove out to Mr. Magowan's.

Q. Who were there?

A. Only Mr. Magowan and myself.

Q. Nobody else was present at the interview?

A. No, sir.

Q. Mr. Magowan is not a practical potter, is he?

A. No, sir; I went to tell Mr. Magowan that I thought it was not for the best interest of the pottery to make that ware on that body, and then he referred to Mr. Alpaugh having taken some of the ware and tested it in his house, and said he thought it would be all right.

Q. You heard Mr. Maddock yesterday?

A. Yes, sir.

Q. The question of the ability to print was not a question of body?

A. He does not know much about it, in my opinion.

Q. You are not an expert?

A. No, sir; he is a young man who is just beginning to learn. There is no pottery in town made more bad ware than they have made.

Q. How much of this under-glazed ware do you say you made?

A. I cannot say definitely; I gave a rough estimate; I don't think there was over $25,000 produced altogether.

Q. How much of that came back?

A. Well, I don't know; from the statement that your side has made, it would appear that there were very large quantities, but there was not near so much came back, I don't think, as you say.

Q. Then the books are not true according to your judgment; that is the result directly from the books.

A. I don't know.

Q. That is what the books report.

A. When the goods were returned they were re-fired, I know, and sent back to them.

Q. To the same parties?

A. Often to the same parties.

Q. Don't you know the Monongahela House ware was an entire loss?

A. I don't know about the particulars of that.

Q. Don't you know that was re-fired and sent back, and afterwards turned out a complete loss?

A. I never heard any complaints about crazing after the ware had been re-fired.

Q. Don't you know you were called into the office, and it was stated to you that it was gone, a complete loss?

A. No, sir; not after re-firing.

Q. Did you not then admit that you were unable to produce the ware?

A. No, sir; I never admitted at that time; I never had such a conversation; I stated before they began to make it, that I thought it would be a mistake to make it.

Q. But did you not admit that you were unable to make the under-glazed decorated ware?

A. There was no conversation of that kind ever took place.

Q. Did you ever have any conversation with Mr. Magowan in reference to it, or with Mr. Alpaugh?

A. In reference to printed ware?

Q. Yes.

A. Yes, we talked many times.

Q. Did you ever admit to him you could not manufacture it?

A. I told them I thought it would be a mistake when we first began, and never went heart and soul into it.

Q. Yet you know it could be successfully done?

A. I think it would be a success now, if they would allow me to use my own judgment.

Q. Who prevented you?

A. Alpaugh, Magowan and Donoher, all three of them—to make ware that was as white in color as our imperial china.

Q. Then you want me to understand that the success of the under-glazed decorated ware lies in the whiteness?

A. I mean to say that that ware, which is printed on a dark body, is more substantial that a white body; that is, ware printed on the biscuit.

Q. Do you mean to say that ware printed on the biscuit, produced by the best establishments in France and England, cannot be produced in just as pure and white a color as ware that has an over-glaze printing; in other words, do you mean to say that the hard porcelain Sevres ware decorated on the biscuit is not as white as any china in the world?

A. It is very white ware; the most they produce on the biscuit is artistic ware, and does not get out like the ware when made in bulk.

Q. I am asking whether it can be done?

A. There is no doubt that with artistic pieces of ware it is done, but to produce it in bulk and throw it on the market, as we do, I think it is impracticable.

Q. You think it is impracticable?

A. According to my judgment, yes, sir.

Q. Who purchased the materials for the manufacture of imperial china and this imperial china that was used—this body for the under-glazed decorative ware?

A. I did.

Q. Who mixed them?

A. I did.

Q. Whose receipt is used for the mixing?

A. Receipts of my own, of my own composition.

Q. In other words, it was your ware, was it not?

A. So far as the mixing of the body and glaze was concerned I did the mixing.

Q. It was hardly a body of your own making?

A. No, sir; similar bodies had been used in Trenton before.

Q. Could those men have made it—Alpaugh & Magowan?

A. No, sir; they had nothing to do with that.

Q. It was your own body that you brought there when you came as superintendent?

A. They had nothing to do with the making of the ware.

Q. What knowledge would they have had of any change you might have made in order to make a body which, in your judgment, would have been suitable for under-glazed printing, they not being practical men?

A. As soon as they saw it come out of the kiln; the color would have been inferior.

Q. Would not that have been part of your management?

A. I would have had to use a larger amount of very bad colored clay in order to make such ware as I wanted to make.

Q. What did you buy the ball clay for?

A. To take the place of a more expensive clay that was got in this country; other potters around Trenton also bought it for that purpose.

A recess was then taken.

After recess.

Q. Did I understand you to say, Mr. Wood, that you had never been asked by anyone—that is, by Alpaugh or Ma-

gowan or anyone connected with that pottery—to make any guarantee about any ware?

A. Only in the case that I mentioned last November, when they wanted me to guarantee to produce ware at a certain percentage at cost.

Q. But prior to that you had never been asked to make any guarantee?

A. Never.

Q. Do I understand you to say it would be an unusual thing to ask a man who had charge of so many things as you had to make any guarantee?

A. I never heard talked of such a thing.

Q. Did you not state that on your direct examination?

A. I think it would be; I never heard of such a thing happening.

Q. Would it be more unusual or more unfair for you to guarantee the result of your own work than for your employer to guarantee to you a certain sum out of the profits that were to be based upon your own work?

A. I think so.

Q. You think it would be more unfair?

A. Yes, sir.

Q. In reference to this bone china, did you state to them that you had had no experience in the manufacture of bone china?

A. I told them I had made a small quantity only; I had no experience in making it in bulk.

Q. Did you not introduce the subject to them yourself?

A. No, sir; Mr. Parker admits in his evidence that he did.

Q. I asked you if you didn't; did you not state you would not be able to produce it in paying quantities?

A. No, sir.

Q. Was not the reason it was abandoned as a manufacture because you were unable to produce it in paying quantities?

A. It never was abandoned; it was in process of manufacture at the time we left.

Q. But it was not carried out while you were there, was it?

A. The manufacture of it?

Q. Yes.

A. Yes, sir.

Q. Were the orders filled?

A. So far as we were able to fill them up to that time.

Q. Were you not unable to fill them so as to make them pay?

A. I don't know that we were.

Q. Was it not represented to you that the cost of manufacture as you made it, was such as to make it an unprofitable work to be carried on?

A. No, sir.

Q. Were no complaints made to you of the character of the goods as turned out?

A. No, sir; nothing but praises were given to me for the quality of it, no complaints.

Q. You knew nothing of any complaints?

A. No, sir.

Q. There were no complaints made to you of any of the ware manufactured by you?

A. Any of the bone china?

Q. No, any of the ware.

A. I don't remember any special complaints.

Q. You never were brought before the firm, and had distinctly the complaints made before you of the work of your manufacture?

A. Not to my knowledge; no, sir.

Q. Not to your knowledge at all?

A. No, sir. So far as the under-glaze work was concerned, it was understood they were responsible for that, and not me.

Q. You may say that you understood it; I object to your interjecting anything else. In reference to this conversation which you allege you had in 1885 with Mr. Magowan, did you not approach Mr. Magowan with an offer to purchase his interest?

A. No, sir.

Q. Did you ever offer to Mr. Magowan to purchase out his interest in the pottery?

A. Not to my knowledge; we talked about it, but he made the first offers.

Q. He made the first offer?

A. Yes, sir.

Q. Are you certain of that?

A. I feel sure of that.

Q. Where was it?

A. Right in his office.

Q. Who were present?

A. No one but Mr. Magowan and myself.

Q. Did you ever have any conversation with him about it?

A. I don't remember.

Q. Will you state the time?

A. I think the time was in the summer of 1885.

Q. Did you ever have any conversation with Mr. Alpaugh upon that subject?

A. Mr. Alpaugh once proposed to me—asked me if myself and James Barlow would be able and willing to buy out Mr. Magowan's interest.

Q. When was that?

A. I think that was in the summer of 1884.

Q. Where was that?

A. In Mr. Alpaugh's office.

Q. Who were present besides Mr. Alpaugh?

A. No one but myself and Alpaugh.

Q. Was Mr. Barlow present?

A. No, sir; I told Mr. Barlow what he said.

Q. You knew that the statements from the book showed that there was no profit made after the first six months, did you?

A. No, sir; I didn't know anything about that.

Q. Did they state that to you?

A. No, sir.

Q. Did they show you the books?

A. No, sir.

Q. Didn't you say this morning that there was no showing of profits except the first six months; after that it was all loss?

A. I think I did; but they didn't show any loss or any profit; they made no showing to us after that.

Q. Didn't you see the books?

A. No, sir; I do not understand anything about book-keeping, or know anything about that.

Q. But didn't Mr. Mulford show you the statement of the results?

A. No, sir; sometimes I saw the shipping books and the amount of goods shipped in the year; and that is all I know about it.

Q. Mr. Mulford didn't show you the result of the business when the statements were made?

A. No, sir; not to my knowledge.

Q. You assisted in making the inventories always, did you not?

A. I simply assisted in counting the amount of ware in each bin; beyond that I had nothing to do with it.

Q. You did make that estimate did you not?

A. Along with some two or three others—three or four others—I may have assisted to count the ware in each bin in the warehouse.

Q. Who estimated the amount of crude material that was on hand?

A. That was usually done by Mr. Magown, Alpaugh and myself; we went around together.

Q. You were there at that time, were you not?

A. Yes, sir.

Q. Did you not take part in the making of every inventory during the time that you were there?

A. Just to that extent; yes, sir.

Q. Did you see those inventories after they were taken?

A. No, sir; I don't remember that I ever did.

Q. Did you ever ask to look at them?

A. I don't know; I may have asked them to tell me the amount of stock; I don't remember ever seeing the books.

Q. You never made any objection to the books, did you?

A. I made an objection to the discount they took off of them?

Q. But no objection to the inventories that were taken?

A. I think I remember on one occasion; I thought they were undertaken; the stock appeared to me to be larger than the statement called for.

Q. Where did you make that statement?

A. In the office, I believe, when we were talking together.

Q. Was that an inventory you assisted in taking?

A. The assistance I gave in taking inventories did not amount to anything or enable me to see anything about it.

Q. Did it not amount to putting the value on the material on hand?

A. That was put on according to what it was worth, not according to the price list and what we paid for the materials, as far as the raw material was concerned.

Q. You don't know that they were put down at any other figure?

A. I know there was a large discount taken off the price they sold for; in one case there was 50 cents and 5 and then 75 per cent., which left only about 11 cents out of 100.

Q. That was on goods that was re-fired?

A. No, sir; on goods taken in stock, as I understand it.

Q. No, that was the statement of Mr. Mulford, of the discount on goods that had been re-fired after they had been sent back?

A. Oh, no.

Q. As to the discounts, did you not state you participated in fixing the prices?

A. The discounts were the same as those used in most other potteries.

Q. Did you not state on your direct examination that in addition to other duties devolved upon you, they required you to fix the prices?

A. In the decorative department.

Q. You did know all about this?

A. I assisted to figure them up.

Q. You never made any objection to that, did you?

A. To make the price list, do you mean?

Q. No, to the price list as made?

A. I understood you a little differently; I only assisted in making the price list from which the goods were sold to the customers.

Q. Does not that contain the discounts?

A. No, they take a discount from that.

Q. Is not that a part of the price list always?

A. That is a part of the price list after the value of the stock is taken from it, but after figuring up the net value of the stock, they take off additional discounts, and it was

those additional discounts that I sometimes objected to; for instance, if you sell a man a bill of goods out of the wareroom, the usual discount would be 40 per cent. off; if you took these same goods in stock, Mr. Magowan would usually take 40 per cent. off, and then usually 50 per cent. and 25 per cent. in addition to that, which would make the amount of the goods come to a very little, you know; that is what I object to.

Q. Where did you see it to object to it?

A. They had a memorandum of it, and explained the discount they took off.

Q. You saw it on the book?

A. No, sir; only on the statement.

Q. You didn't know it was taken off from any examination of the books?

A. I only know from what Alpaugh and Magowan said in the office.

Q. You have not examined the yearly statements to know what discounts were given?

A. I never had an opportunity.

Q. What, to examine the books?

A. Of making a balance sheet.

Q. Do you mean to say you never had an opportunity of examining a journal which was presented here?

A. Yes, sir; the journal used to lay on the desk; the book-keeper used it; I never was invited to use it, and might not understand it if I did.

Q. Mr. Mulford stated that you had examined it.

A. Mr. Mulford's statement is false.

Re-direct examination:

Mr. Aitkin—If your honor pleases, there is one matter I thought was explained by the witness, which I find has not been, and which I ask leave to have him explain, that is, the difference between the output and expense. I would like the witness to explain that.

By the Vice-Chancellor—Very well, he has not done so; he may do so now.

By the witness—It is stated in the defendant's evidence that the output under their present management is larger in comparison to their present expense than it was. I would like to say that during the time that myself and Mr. Barlow were with them that the average production of their pottery was only about two gloss kilns per week, and that I very frequently explained to them in Mr. Barlow's presence that if all their heavy expenses were divided between two gloss kilns per week, it would certainly make it so that they would make no profit, that the expense and the output would be about equal. For instance, I stated to them—I figured it up roughly in my mind—that their expenses, leaving out the pay-roll, were from $700 to $800 per week. What I mean by that is the interest on the whole amount of the money invested in the business, salaries paid to and guaranteed to myself and Mr. Barlow, salaries drawn by Alpaugh and Magowan and others that didn't appear on the pay-roll, taxes and water rent, &c. I stated to them that if they only made one gloss kiln per week that that gloss kiln would have to make $800 profit in order to make them come out even. That if they made two gloss kilns per week each gloss kiln would only have to make $400 profit to come out even; that I thought when they made two gloss kilns their output and expenses would be about even, but when they made three kilns, I thought then they would commence to make profit, then the output would begin to be larger than the expenses, though the management would be just the same; and if they made four gloss kilns per week, which would be running their pottery to its full capacity, only instead of the expenses being per kiln $800 per week, as in the case where they made one, it would only be $200 per kiln, and the output would be so much larger than the expenses. When they compare the output and the expenses of the pot-

tery at the present time they ought to take into consideration the larger number of gloss kilns that they are now making than they made under our management. I would like to state, if the Court thinks I am not taking up too much time, why our business was smaller under my and Mr. Barlow's management than it is now.

Mr. Vroom—Well, if the witness knows anything about the present matters.

The witness—I only take their evidence as given here. It is a matter that has not been touched on. I would like to state it if my counsel will not object.

Q. What is it?

A. After we had been manufacturing imperial china ware for about one year it was so successful and so well liked by the trade that Mr. Magowan decided to discontinue the manufacture of white granite and C. C. ware that had been made almost entirely by the Coxon Company; he thought he could run the pottery to its full capacity on imperial china only. When he stopped manufacturing the white granite and C. C. ware it curtailed the business to a very great extent, taking out over $150,000 to $175,000 worth of business per year, which the Coxon Company had already established. That necessarily made our business small, and we only drew on an average, I think, about two gloss kilns per week. The remarks now have reference to their present management. They have since we left them commenced to resume the manufacture of white granite and C. C. ware.

Q. (By Mr. Vroom)—Do you know that of your own personal knowledge?

A. Yes, sir; that they are manufacturing now white granite and C. C. ware; I have seen the ware and know they are making it; it gets all around the country after it is made; they have, since we left, commenced to manufacture white granite and C. C. ware, giving them this large amount of trade that Mr. Magowan had sacrificed to the firm under our management; consequently, they are now making a larger number of gloss kilns than we did; that

will necessarily increase their output in comparison with their expenses.

Re-cross examination.

Q. Do you know that they are making any C. C. ware now?

A. I have been informed so.

Q. Do you know it?

A. I am not positive; I know they are making white granite; I have seen some.

Q. Made there?

A. Yes, sir.

Q. Will you swear they are making any C. C. ware in that pottery?

A. No, sir.

Q. Or have made a dollar's worth since you left there?

A. No, sir; I won't swear it.

Q. How do you know the products during the Coxon management was $175,000 a year?

A. I stated that it was about that of white granite and C. C. ware.

Q. How did you know that?

A. From seeing their previous shipping books.

Q. Did you ever examine their shipping books?

A. The amount of goods shipped by them and us was always accessible to me; it was a plain book and anyone could understand it.

Q. You examined the Coxon & Co.'s shipping books?

A. The pay-roll and shipping books I always was interested in.

Q. And did examine them?

A. I saw the amount they shipped from time to time; they shipped about one hundred and ninety odd thousand dollars' worth of goods the last year they were there; part of those goods were what they call stone porcelain made in one special toilet set.

Q. Did the shipping book show the value of goods shipped?

A. They are the little books there that they entered the shipments in.

Q. Did the shipping book you refer to show the value of the goods shipped?

A. The books that I refer to show the amount of goods shipped; the gross value of the goods shipped.

Q. You say that you examined that book?

A. No, sir; I have seen them.

Q. And found that was the value of the goods shipped during the Coxon Company's term there?

A. I am speaking generally, not exactly; the Coxon Company shipped over one hundred and ninety thousand dollars' worth of goods the last year they were in business, I believe.

Q. Did you not burn all the kilns that were necessary for the supply of the goods that were demanded while you were there?

A. The first fall that we were there we run the kilns for the first two months to about their full capacity, never since, not to their full capacity, I don't think, only two or three weeks at a time.

Q. I ask whether they were not run to supply the demands of the trade and sale?

A. Yes; they were only run to supply the demand on account of curtailing a part of the business; the demand for the goods was small.

Q. I ask whether they were not run so as to supply the demand only?

A. Not only; sometimes when we had orders on the books, Mr. Magowan would stop manufacturing, and our orders suffered, and were countermanded sometimes.

Q. As a general rule they were only run to supply the demand?

A. Well, sometimes they were; yes.

I. Bently Pope, a witness called on behalf of the complainant, in rebuttal, being duly sworn according to law, testified as follows:

Direct examination (by Mr. Aitkin):

Q. You live in Trenton?

A. Yes, sir.

Q. What is your business?

A. Decorator.

Q. What pottery are you employed in now?

A. The Union Pottery.

Q. How long have you been engaged in the pottery business?

A. About twenty-five years.

Q. Do you know Mr. Joseph Finney?

A. Yes, sir.

Q. A potter?

A. Yes, sir.

Q. Where is he employed?

A. He is employed by me.

Q. At the present time?

A. Yes, sir.

Q. What at?

A. He is shipping clerk.

Q. What do you pay him at the present time, what salary?

A. Twelve dollars a week.

Q. What are his abilities to perform the labor required of him?

A. We find him the best man we ever had; he has only been in that position about four or five weeks.

Q. What was he before that?

A. He was a warehouseman; he was getting $10 a week then.

Q. You were formerly in Brewer & Ott's establishment?

A. Yes, sir.

Q. What position had you there?

A. I was foreman of the decorating shop.

Q. Simply of the decorating shops?

A. Yes, sir.

Q. What salary did you get there?

A. I had $40 a week and ten per cent. of the net profits of the decorating department only.

Q. Have you sufficient knowledge to say what the general salary as foreman of decorating shops in the city of Trenton is?

A. No, sir; there is a vast difference between the ability of one man and another; of course, you cannot regulate them.

Q. From your knowledge of the pottery business, to what extent is it that potters find crazed ware upon their hands produced in the manufacture?

A. To what extent?

Q To what extent?

A. Well, that I could not tell.

Q. Do all potters have more or less?

A. Yes, sir; everybody.

Q. Everybody does?

A. Yes, sir.

Q. You are acquainted with Mr. Frank Magowan?

A. Yes, sir.

Q. Did you at any time have a conversation with him in reference to James Barlow, and if so, will you state when and what it was?

A. Yes; I met Mr. Magowan a year ago last summer; I was going down to Ocean Grove and Mr. Magowan was going to Spring Lake; we got to talking over business, and finally got to talking over the new shape—the new square shape they were about to make or were making, I am not sure which—and the conversation drifted on to Mr. Barlow, and before he said anything about him I gave Mr. Barlow a word of praise which I thought was due him, and Mr. Magowan said that Jimmy was the right man in the right place. There was other conversation but I cannot remember, but it was all about Mr. Barlow and his success with the new shape.

Q. A shape?

A. A shape that he was modeling, that was all.

Cross-examination (by Mr. Vroom):

Q. I understand you that in his conversation he was referring to Mr. Barlow as a modeler of that shape?

A. Well, it was not specially to a modeler.

Q. Were you not talking about his modeling of the shape?

A. Yes, sir; we were talking about his modeling.

Jesse Dean, a witness produced on the part of complainants, in rebuttal, being duly sworn according to law, testified as follows:

Direct examination (by Mr. Aitkin):

Q. You are engaged in a decorating pottery establishment, are you not?

A. Yes, sir.

Q. How long have you been engaged in the pottery business?

A. Twenty-four or twenty-five years.

Q. You have a large establishment in Trenton?

A. Yes, sir.

Q. Have you ever bought imperial china ware from Alpaugh & Magowan's works?

A. Yes, sir.

Q. Can you tell us about when, during what space of time?

A. I think 1884, 1885 and 1886.

Q. What did you buy the ware for?

A. To decorate.

Q. Have you bought the same kind of ware from other potteries in Trenton?

A. Yes, sir; most of them.

Q. How did the ware bought from the Empire Pottery compare with that bought from the other potteries?

A. Well, I think it was fully as good as any of the other makes that I used, that is my belief.

Q. The general comparison was about the same?

A. Yes, sir; I believe it was about the same.

Q. What kind of goods did you buy, what class?

A. Unselected.

Q. What is called the run-of-kiln?

A. Yes, sir; it is the same thing only worded different.

Q. Did the ware you bought of them craze any more than ware bought from other potters?

A. No; I don't know that it did.

Q. Is it your experience that all ware will craze to some extent?

A. It has been my experience; yes, sir.

Q. Even after being selected?

A. Yes, sir.

Q. That is one of the difficulties you have in decoration, is it not?

A. Yes, sir.

Cross-examination (by Mr. Vroom):

Q. How much do you suppose you bought from them during that period?

A. I could not say, but I should think it was from two thousand dollars to three thousand dollars' worth.

Q. From two to three thousand dollars' worth?

A. I could not say positively.

Q. For what purpose did you buy it?

A. To decorate and to sell it.

Q. You decorate upon the gloss, then?

A. Yes, sir.

Q. Altogether?

A. Yes, sir.

Q. At your establishment?

A. Yes, sir.

Q. Did you make any claims upon the potteries for crazed goods?

A. Yes, sir.

Q. Did you upon Alpaugh & Magowan?

A. Yes, sir; they were among others.

Q. To what extent did you make a claim against them?

A. I cannot be sure, but it was over $100.

Q. Was it not over ten per cent. of the amount you purchased?

A. I don't think so.

Q. You don't remember the amount?

A. I do not; I think it was nearer six per cent.; five per cent. or six per cent.

Q. Is that the settlement which was made between Mr. Buchanan and myself?

A. Yes, sir.

Q. You cannot recollect the—[Interrupted].

A. Not the exact figures, I cannot.

Q. You would remember them if I produced them?

A. Yes, sir.

Q. Well, I will do that. I have not got them here now, for I didn't know you were to be a witness, or I would have produced them. That is all.

Re-direct examination:

Q. The claim that you put in, was it based upon the value which you bought at, or upon the value of decorations?

A. The claim was based upon the loss to me after it was decorated.

Re-cross:

Q. That loss arose from the fact that you had put your labor upon bad ware?

A. Exactly.

Q. (By Mr. Aitkin)—Upon ware that crazed after it came to your establishment?

A It was perfect when we decorated it, and crazed afterwards.

Q. Perfect when you decorated it, and crazed afterwards?

A. Yes, sir.

Q. And you have had the same experience with all potters?

A. Oh, yes.

Q. (By Mr. Vroom)—How many potteries did you deal with?

A. I dealt with the Mercer, with the Empire, the Union, the East Trenton, the Crescent, Isaac Davis'—principally those, I think.

John Wigley, a witness produced on the part of the complainants, in rebuttal, being duly sworn according to law, testified as follows:

Direct examination (by Mr. Aitkin):

Q. What is your occupation?

A. Foreman of a decorating establishment.

Q. Where?

A. At the International Pottery now.

Q. Where were you before that?

A. William C. Hendrickson & Co.

Q. What was your business?

A. Decorating.

Q. How long were you there?

A. Two years.

Q. Did Mr. Hendrickson buy ware, imperial china, from Alpaugh & Magowan?

A. Yes, sir.

Q. Did that ware pass through your hands?

A. Most of it; yes, sir.

Q. And under your inspection?

A. Yes, sir; that which was decorated, during the time of decoration.

Q. Have you examined ware from other potteries?

A. Not particularly.

Q. But it has passed through your hands, other ware?

A. Yes, sir.

Q. How did this ware which was bought from Alpaugh & Magowan compare with other ware that passed through your hands?

A. I never experienced very much difference; it seemed to pass through equally if not better than most of them.

Q. As good as most of it?

A. Yes, sir.

Q. Did you see any of the craze?

A. Very little.

Q. How was the finish of that ware; was it as good or better, or how, than other ware?

A. The making of it?

Q. Yes; what is called the finishing up.

A. I always thought it was the nicest thing we handled, and well made too; I never found much fault with it, that is, in comparison with other firms, the other ware that we bought.

Not cross-examined.

William Tatler, a witness produced on behalf of the complainants, in rebuttal, being duly sworn according to law, testified as follows:

Direct examination (by Mr. Aitkin):

Q. What is your business?

A. Decorator?

Q. You live in the city of Trenton?

A. Yes, sir.

Q. How much experience have you had?

A. About 25 years I think, it—that is, indirectly and directly.

Q. You are a member of the firm of Swann, Tatler & Co.?

A. Formerly.

Q. And while there did you handle the imperial china ware from Alpaugh & Magowan's?

A. I believe we did; yes, sir.

Q. Are you able to speak in regard to the quality and finish of that ware?

A. So far as the quality is concerned, I am not altogether able as a practical potter to decide, but as it was sent to us, so far as my judgment is concerned, I think the ware was as good as anybody elses, that is, so far as I am able to judge; of course we did not have much experience with it, really, because we were in glass more than anything else.

Q. When did your firm dissolve?

A. In January, 1886.

Q. After you had dissolved, did you make application to Alpaugh & Magowan for a situation?

A. Yes, I called in there in a casual way; I was around to see most of my friends at that time.

Q. Who did you see?

A. I saw Mr. Alpaugh.

Q. In the office?

A. Yes, sir.

Q. What was the conversation in regard to it?

A. I asked them if they needed an overlooker; I thought, perhaps, they might, and he said no, that he thought not; that they seemed to be satisfied with Mr. Wood; he seemed to be running it all right.

Q. What did they say about his managing the practical part of it?

A. Well, I don't remember any conversation in relation to that at all; all that I remember was that Mr. Alpaugh merely said that Mr. Wood seemed to be running it all right, and that he thought that they did not need anyone; that is all that I can remember.

Q. Did he say anything about the management being a success, or anything of that kind?

A. No, sir; not that I remember; I cannot say positively, because that was not my business there; it was merely to—[Interrupted].

Q. Look for a situation?

A. Yes, sir.

Q. And they didn't need anybody, because they had Mr. Wood and he was satisfactory?

A. Yes, sir; that was the reason.

Cross-examination (by Mr. Vroom):

Q. You handled but a small amount of their goods, did you not?

A. Yes, sir; very small, because we were in the glass business; we handled it more because it was sent to us by other parties, so we were not so particular as we would be if we bought the goods altogether.

Q. You didn't buy them yourselves?

A. We bought some, but comparatively little; but we bought as much there as anywhere, I believe.

William H. Beable, a witness called on behalf of the complainants, in rebuttal, being duly sworn according to law, testified as follows:

Direct examination (by Mr. Aitkin):

Q. You live in Trenton?

A. Yes, sir; Chambersburg.

Q. What is your occupation?

A. I am an editor and publisher; I publish a newspaper.

Q. Were you formerly in the employ of Alpaugh & Magowan?

A. I was, sir.

Q. In what capacity?

A. Traveling salesman.

Q. How long were you connected with the pottery business?

A. Well, for a few years; not very many years; I was there fourteen months.

Q. Do you recollect during what time?

A. From the November, 1884, until the end of 1885, until December 31st.

Q. Excuse me, have you not got it wrong?

A. No, sir; I think that is right; during the whole year of 1885.

Q. (By the Vice-Chancellor)—At the end of the year before last?

A. Yes, sir.

Q. (Further direct)—I thought it was a year earlier.

A. Yes, sir; it was in November, 1883, that I went there, and I was there during the whole of 1884; yes, 1885 and 1886 I was away.

Q. You were traveling salesman; did you meet with dealers who bought goods of Coxon & Co.?

A. Yes, sir.

Q. Did they make any claims for damages of goods they had bought of Coxon & Co., of you?

A. They complained of Coxon & Co.'s wares, so much so, that I found it desirable to ignore the fact, in trying to sell them goods, that I represented the successors to the firm of Coxon & Co.

Q. How did the ware made under Wood and Barlow's administration stand with the trade throughout the country, as you understand it?

A. It gave general satisfaction.

Q. What kind of ware did you sell?

A. Imperial china mostly, both white and decorated.

Q. Was any complaint made to you by the trade about their orders being filled that they had given the firm?

A. Yes; there were complaints made from time to time about delays in filling orders.

Q. Did the dealers make any claim on the imperial china

for damages sustained by reason of buying the previous goods of Coxon & Co.?

A. Well, I can't say specifically as to that.

Q. You don't recollect as to that?

A. I have known of one or two cases, but I cannot remember just now, where people have tried to make the claim, and I have told them that was not fair, that it was a different firm altogether.

Q. [Showing witness the paper]. Look at that paper, and see if that is the letter you received from the firm during the time you were with them?

A. Yes, sir.

Complainants' counsel then offered said letter in evidence, and the same was marked *Exhibit C 12*, for the complainant.

Q. [Showing witness a paper]. Look at that one. Is that another?

A. Yes, sir.

Complainants' counsel offered said letter in evidence, and the same was marked *C 12*.

Mr. Aitkin—One of these is a notice to cease the manufacture of C. C. ware and to confine it to imperial china. I put it in to show the date when that was done.

Cross-examination (by Mr. Vroom):

Q. Who got you this place?

A. Nobody got me that place; I wrote to the firm, and I had a letter from Mr. Magowan asking me to call around and see him.

Q. Didn't Mr. Wood obtain you the situation as salesman?

A. No, sir; not at all.

Q. He had nothing to do with it?

A. No, sir; I don't think I had met Mr. Wood before that; I wrote to the firm, and Mr. Magowan wrote me a letter asking me to call at the mill to see him; I did so, and made an arrangement for a day to meet him and Mr. Wood and Mr. Barlow together, up to which time I have no recollection of making Mr. Wood's acquaintance.

Q. You say you continued there during the year 1883 and 1884?

A. Yes, sir.

Q. You were discharged, were you not?

A. No, sir; I was not discharged.

Q. Are you sure?

A. Yes, sir.

Q. And didn't you assign as a reason that you could not sell the goods that they were making.

A. No, sir; most assuredly not; I left perfectly of my own accord, at the expiration of the year; I wrote and told them I would not go any more, because I did not care about traveling on the road.

Q. Did you receive a letter from them, discharging you upon that ground?

A. No, sir; I received no letter discharging me on any ground.

Q. You have no letter of that kind in your possession?

A. I have no such letter in my possession and never received any such letter.

Q. Did you make any complaint in writing to the firm for your customers, for allowances for crazed ware during 1884?

A. Not to my recollection.

Q. Did you sell the under-glazed ware?

A. The under-glazed decorated ware?

Q. Yes.

A. Yes, sir.

Q. Didn't you make claims in writing for allowances for customers for that very ware?

A. No, sir.

Q. You never made any?

A. No, sir; I have no recollection of making any.

Mr. Vroom—Very well we will produce them, that is all.

Lewis Toft, a witness produced on behalf of the complainants, in rebuttal, being duly sworn according to law, testified as follows:

Direct examination (by Mr. Aitkin):

Q. You live in Trenton?

A. Yes, sir.

Q. Employed in a pottery?

A. Yes, sir.

Q. How long have you been in that business?

A. From a boy.

Q. How long has that been?

A. Take 13 from 47 and you have it.

Q. About 30 odd years?

A. Thirty-four; yes, sir.

Q. What have you worked at during that time, what branches?

A. Dipping, firing and placing; I have earned my living at all three.

Q. And managing?

A. I was the manager at Ott & Brewer's, of what is known as the kiln department, biscuit and gloss, and decorated ware-house.

Q. Did you work for Alpaugh & Magowan?

A. Yes, sir.

Q. When?

A. I left there last April.

Q. How long were you there?

A. If my memory serves me right, I think I was there two years; I think I went there in March, and left there two years following, in April; I think that was the time.

Q. Had you anything to do with judging the firing of the ware; did you see anything of the firing of the ware so that you were able to judge about it?

A. Well, the dipping room was a room between the two kiln sheds; of course every dipper that feels the responsibility of his position, he is expected to go and examine the ware for his own sake at least.

Q. Was it made part of your duty to examine it?

A. Yes, sir.

Q. During the two years you were there, how was the firing in that establishment?

A. Well, it would compare with anything I have seen in the city of Trenton, and better than a great deal I have seen.

Q. Did you take any particular notice of how the biscuit ware was fired?

A. I was obliged to take notice of that, because I handled it all.

Q. How was that?

A. It would compare with any I handled anywhere.

Q. Was any quantity of it put back to be re-fired?

A. I never remember any.

Q. Did you know James Kirkham, a fireman?

A. Yes, sir.

Q. What kind of a fireman was he?

A. In my judgment, he is a very good fireman; I have not only known him as a fireman in this country, but in England too, at the same establishment that I worked at.

Q. Did you take any particular notice of the ware when it came out of the gloss kiln?

A. Yes, sir.

Q. How it came out?

A. Yes, sir.

Q. Was there any bad ware in it, any more than in other potteries?

A. No more than anywhere else, not so much as some places that I have seen.

Q. Did you notice the imperial china ware, how it came out?

A. There was little else made besides that and sanitary ware.

Q. Did that come out good?

A. In my judgment it looked excellent.

Q. What have you to say in regard to the proportion of thirds coming out of the kilns after they were fired?

A. I could not say anything in regard to the thirds, because I could not judge from counts as a warehouseman would, who has to examine the goods after they were taken up there.

Q. As far as you saw, did you see any unusual amount of defective ware?

A. No, sir; not any more than an average anywhere else; a little better than some places.

Q. Do you remember their making bone china?

A. Yes, sir.

Q. Did you dip that ware?

A. I did.

Q. Did you take notice of that, how it came out of the gloss kilns?

A. Yes, sir; I noticed that.

Q. How was it, good or bad?

A. It was very good, in my judgment.

Q. Have you seen bone china in England?

A. Yes, sir.

Q. How did this compare with that you saw made there?

A. I worked at Allcock's, in Burslam, and helped to draw that ware there; sometimes we did three and sometimes four a week, and would compare with any other drawn there.

Q. In your opinion, was the manufacture of bone china here at Alpaugh & Magowan's a success or not, so far as it went?

A. As it came to my hands and I was able to examine it, I considered it a success.

Q. Did you also dip the biscuit printed ware?

A. Yes, sir; most of it; nearly all.

Q. Was there any particularity by Mr. Wood about the selection of that ware for biscuit printing?

A. I never knew of any.

Q. Did you ever see biscuit-printed ware come out of the kilns, that was not uniform in color, in England, where the colors had run with the gloss?

A. Oh, yes; you often meet with a little of that.

Q. And you have seen it when it came out, some dark and some light out of the same kiln?

A. It would often do that.

Q. Have you seen it?

A. Yes, sir.

Cross-examination (by Mr. Vroom):

Q. Your position there was to dip the ware into the gloss?

A. Yes, sir.

Q. That was your business?

A. Yes, sir.

Q. Did you have anything else to do; you had nothing to do with the manufacture of the ware?

A. I had nothing to do with the making of it.

Q. You had nothing to do with the making of the gloss?

A. Not usually.

Q. So that the simple duty you had was to dip into the gloss prepared by whom?

A. Mr. Wood, I suppose.

Q. Do you know whether he did?

A. I never saw him mixing it; it was the general understanding that he mixed it.

Q. Did he mix the gloss that you dipped the imperial under-glazed printed ware in?

A. I never knew anyone else to mix it.

Q. Did you know enough about that gloss to know whether it was changed at any time or not?

A. I hardly understand the question.

Q. Whether the ingredients were changed?

A. I have no knowledge of the ingredients, not the proportions, or even the ingredients, it was not my business.

Q. Did you ever hear him say anything about changing the gloss for the under-glazed ware?

A. We had a separate gloss for them all the time.

Q. Did he ever change that, do you know?

A. I don't know if it was changed or not; it was always the same in color.

Q. Do you know whether he ever experimented with the ingredients?

A. No, sir; I never saw him fixing it.

Q. Did you ever talk with him about it?

A. Well, managers never talk to employés about their gloss.

Q. Did he?

A. No, sir; my business was to dip the gloss and I did it to the best of my judgment, and my services ended there.

Q. You say you never saw any re-firing of biscuit?

A. No, sir; I never saw a piece, to my recollection.

Q. Don't you remember goods being brought from the ware-rooms upstairs, and brought down to be re-fired?

A. No, sir; I don't remember ever seeing any.

Q. Could it be done without your knowing?

A. Perhaps it could, one ware-room was at the other end of the shed.

Q. Then they could have done so without your knowing it?

A. Yes, sir.

James Kirkham, a witness produced on behalf of the complainants, in rebuttal, being duly sworn according to law, testified as follows:

Direct-examination (by Mr. Aitkin):

Q. You were formerly in the employ of the Empire Pottery?

A. Yes, sir.

Q. In what capacity?

A. Fireman and foreman of the kilns.

Q. For how many years have you been a fireman, a kilnman?

A. I have been a fireman for about 26 years, and a kilnman since I first went to work at kilns, about 46 years since, I guess; I never did anything else.

Q. You came to the Empire works at the time Mr. Wood assumed charge?

A. Yes, sir.

Q. Where had you been before that?

A. East Trenton.

Q. He agreed to give you $21 per week, did he?

A. Yes, sir.

Q. Was your pay advanced?

A. Yes, sir.

Q. How, and by whom?

A. By—I made an agreement with Mr. Magowan.

Q. Who made that agreement?

A. Mr. Magowan.

Q. Who with?

A. Me and Mr. Magowan; I spoke to Mr. Wood about it at first; I said the work I had to do I thought I was not paid, and he agreed to give me $25 per week.

Q. Mr. Magowan did?

A. Yes, sir; and Mr. Wood.

Q. Was the agreement put in writing?

A. Yes, sir.

Q. Did you oblige yourself for a term of years?

A. Yes, sir; three years.

Q. Did you sign it?

A. Yes, sir.

Q. Who did all the firing and had charge of the kilns while you were there?

A. I.

Q. When did you leave there?

A. Sometime last March.

Q. About the time Mr. Wood did?

A. Yes, sir.

Q. Were you discharged?

A. Yes, sir.

Q. Why were you discharged?

A. Well, I cannot tell.

Q. No reason was given to you?

A. No, sir.

Q. Where are you employed now?

A. James Moses'.

Q. In the same capacity?

A. I am foreman of the biscuit kilns, not fireman.

Q. How much pay do you get a week now?

A. Eighteen dollars.

Q. Have you as much responsibility as previously?

A. Oh, no; not one-third; no responsibility at all, scarcely.

Q. When you were firing at Alpaugh & Magowan, was there any biscuit ware re-fired?

A. Yes, sir.

Q. Can you give us an idea how much?

A. Well, not so very much.

Q. Not very much?

A. No.

Q. What kind was it that was re-fired? Was it the imperial china or the under-glaze?

A. It was chiefly a little flat—plates.

Q. That was the biscuit ware?

A. Yes, sir.

Q. Soft biscuit ware re-fired?

A. Yes, sir.

Q. Could there be any ware re-fired without your knowledge during the time you were there?

A. No, sir.

Q. Could you give us an idea how much was re-fired during the whole time you were there?

A. Well, I should not think it would be over four hundred or five hundred dozen.

Q. Not altogether?

A. No, sir; altogether.

Q. Of all the re-firing?

A. No, sir; there was one kiln that we had very bad coal, and I could not get the heat; the fire blocked up with ashes and stopped so I could not get the heat, and re-lighted it again; with the exception of that one kiln, I don't think there was over, not over five hundred dozen all the time I was there.

Q. (By the Vice-Chancellor)—Was that kiln you speak of drawn before it was re-fired?

A. No, sir.

Q. (Further direct)—The only expense of that was the coal used?

A. Yes, sir.

Q. And the time of the men?

A. Yes, sir; that would be $4.

Q. Were those part of the plates that you speak of?

A. No, sir.

Q. That was independent?

A. Yes, sir.

Q. Would those that you speak of be a full kiln? Would they make a full kiln?

A. Oh, no.

Q. How much of a kiln?

A. Not above one-third of a kiln.

Q. Did you work at a pottery in England where they made biscuit ware?

A. Yes, sir.

Q. Did you ever see it come out with the colors run in the gloss?

A. Yes, sir.

Q. Some dark and some light?

A. Yes, sir.

Q. How was that, a common occurrence?

A. Yes, sir.

Q. Do you know whether Mr. Wood was particular in his selections for the biscuit ware for the under-glazed work?

A. Yes, sir; very particular; rather more so than I thought was necessary at times.

Q. Do you know anything about his forcing that under-glaze ware through against his will; do you know anything about his being forced to push it through?

A. No, sir.

Q. You never heard anything about it?

A. No, sir.

Q. Was it your duty to take particular notice of the gloss ware as it came out of the kilns?

A. Yes, sir.

Q. How was the loss, in all parts, in that pottery in proportion to what you saw in other potteries?

A. Well, I don't know that I ever saw it less in my life.

Q. While you were there, did you see a great deal of Mr. Wood in the performance of his duties?

A. I saw him around the yard.

Q. That was the only way you can speak of him?

A. Yes, sir.

Q. Looking after the business?

A. Yes, sir.

Q. You cannot tell from what you did see how attentive he was to the business of the concern?

A. No, sir; he was always there.

Q. Do you remember the bone china being manufactured?

A. Yes, sir.

Q. Did you see that come out of the bone kiln?

A. Yes, sir.

Q. Did that come out good or bad?

A. First-class, I thought.

Q. Did Mr. Alpaugh ever talk to you about the reputation of the ware with the trade?

A. Well, it was my—I often asked the salesman about the selling of the ware, how the ware stood.

Q. I asked you about Mr. Alpaugh.

A. Yes; I think I asked him, and he said that it stood first rate, second to none, I remember those were his words at one time, "second to none."

Q. How long before you left did you hear him say that?

A. I should think it was not over three months; I could not swear, but not over three months.

Q. Did you ever see the imperial china come out of the gloss kilns in bad color, some blue and some yellow?

A. No, sir.

Q. If it had done so, would you have noticed it?

A. Yes, sir.

Q. Do you recollect Mr. Alpaugh making a comparison between the Coxon ware and the ware produced under your management?

A. Yes, sir.

Q. What did he say?

A. He went in the ware-room for the first two or three kilns we drew, and picked it up off the floor and compared it with that in the bins fired by the Coxon Company, and he said he would not believe that they got such a good gloss that they had; no one would make him believe the firing would make so much difference.

Q. Did you ever see it come out better?

A. Never in my life.

Q. What kind of a pottery did you work in in England?

A. One of the largest potteries in England; it was formerly John Ridgeley's, where there were 18 kilns; I worked there 16 years.

Q. What was the general condition of this pottery, as to being kept in order under Wood's management?

A. It was kept in order fully as good as any I saw in this country.

Cross-examination (by Mr. Vroom):

Q. Where were you employed before you went with the Empire Pottery?

A. At East Trenton.

Q. With Mr. Wood?

A. Yes, sir.

Q. How long had you been there?

A. I went there in 1876 or 1877.

Q. What were you getting there per week?

A. Well, I had to work by the piece, so much per dozen.

Q. What did it average?

A. Well it averaged more than I got at the Empire.

Q. It did average more than you got at the Empire?

A. Yes, sir.

Q. You left a better position to take that one?

A. Well, I thought it would be a little easier for me; at East Trenton I placed.

Q. How many kilns had they at East Trenton?

A. They had two.

Q. How many at the Empire?

A. Nine—ten with the little one.

Q. How would it be easier at the Empire?

A. I had no hard work, only to fire and superintend the work; at the East Trenton I had to place the saggers in the kiln, and I was getting along in years, and thought I would not take such laborious work.

Q. You say that working at piece work, at the two kilns at East Trenton, you could make more than $21 per week?

A. Yes, sir.

Q. And did regularly?

A. Yes, sir.

Q. How often did they fire those kilns?

A. About twice a week, very often.

Q. When did you come to Trenton?

A. In 1872, I think it was.

Q. What had you been employed at in England?

A. The last place I had in England was for Holingshead & Kirkham, in Burslam.

Q What kind of ware did they make?

A. Printed and painted ware.

Q. Are you a practical potter?

A. No, sir; not a practical potter; I am a practical kilnman.

Q. That is your business?

A. Nothing but kiln work.

Q. You do not consider yourself an expert to pass on the goodness of pottery in either biscuit or otherwise?

A. I think I can tell biscuit ware or gloss ware.

Q. Without knowing the composition of the work or how it was made?

A. I think so.

Q. How can you tell?

A. I can tell often by the ring or the looks of it.

Q. You would consider yourself an expert?

A. I think I would.

Q. Is it often kilnmen become experts in the manufacture of ware? Could you mix it?

A. Not about mixing.

Q. Do you know anything about printing?

A. No, sir.

Q. Under-gloss printing?

A. I have not been printing; I know all about firing; I don't know anything about mixing.

Q. The only thing you have worked at about a pottery has been that of firing kilns?

A. Yes, sir.

Q. That is all?

A. Yes, sir.

Q. Can you give me the percentage of the seconds and thirds that were drawn or taken from kilns drawn by you while you were at the Empire Pottery?

A. No, sir; I cannot give you the percentage, I am satisfied it was less.

Q. I don't care about that; I want to know if you know what the percentage was?

A. No.

Q. You don't know?

A. No.

Q. And you never saw them after the selection was made, did you?

A. Yes, sir.

Q. Why didn't you know then?

A. Because I didn't count it.

Q. You cannot give it?

A. No; it was not my business to count it.

Q. You say that you never saw the imperial china come out of the kilns of bad color?

A. No.

Q. None of it defective?

A. Well, I would not say none, there might be a few pieces now and again.

Q. None of it a bad color?

A. Well, there might be a few pieces bad, something like that.

Q. Was there any hard-fired biscuit left there at the pottery when you left?

A. Hard-fired biscuit?

Q. Yes.

A. I don't know; some of them might think it was hard fired, but I would not.

Q. There was some there?

A. No, sir; I don't consider there was any at all.

Q. Was there any left there that was claimed to be hard-fired?

A. Not that I am aware of.

Q. I mean in the back biscuit room

A. Not that I am aware of.

Q. (By the Vice-Chancellor)—You say that Mr. Alpaugh took up some of the ware of the first kilns that you drew and compared it with some of the ware drawn from some of the Coxon kilns?

A. Yes, sir.

Q. Do you remember what kind of ware it was that Mr. Alpaugh handled; was it the white ware, the stone china, or the C. C.?

A. It was what we call the granite, there was not much else made then, and the C. C.

Q. (Further-cross)—Where did you have that conversation with Mr. Alpaugh relative to the standing of the ware made at the pottery?

A. In the ware-room, in looking at the ware.

Q. Was he alone?

A. Yes, sir.

Q. Was nobody else there?

A. No; there was not at that time.

Q. Nobody in the ware-room at all?

A. No, sir.

Q. When I said was he alone, I meant did he come in alone. Was there anyone else there in the ware-room?

A. Not where we were.

Q. Have you stated all that took place in that conversation?

A. I think so; I asked him if the ware was standing good, for this reason, they say that crazed ware comes from the firing, and I was interested to know how it stood.

Q. There had been some complaint about the crazed ware?

A. No, sir.

Q. Did you ever hear any complaint?

A. Sometimes they said there was a piece or two.

Q. Did you ever hear any complaint of the crazing of under-glazed decorated ware?

A. Well, the under-glazed ware—sometime before we quit there, there was some of that under-glaze ware crazed, I believe.

Q. Don't you know that it did?

A. Yes, sir; I saw some of the under-glaze ware.

Q. Didn't you re-fire some of it?

A. Yes, sir.

Q. Quite a quantity?

A. Well, yes; quite a quantity of the under-glaze.

Q. Quite a quantity of the under-glaze ware?

A. Yes, sir.

Q. Was it in reference to that you spoke to Mr. Alpaugh?

A. No, sir; the general ware.

Q. What do you mean by the general ware?

A. The white ware.

Q. You mean simply the white ware?

A. Yes, sir.

Q. That was all?

A. Yes, sir.

Q. You mean by the white ware, the imperial china?

A. Yes; the imperial china.

Q. How many times were goods taken from the ware-room and fired over?

A. I could not tell how many times.

Q. Often?

A. No.

Q. Twice?

A. Oh, twice; it might be a dozen times.

Q. You don't remember?

A. No, sir.

Re-direct examination:

Q. That which you re-fired is what you refer to as making about one-third of a kiln besides the kiln you re-fired?

A. Yes, sir.

Q. (By Mr. Vroom)—I am referring to the under-glaze printed ware that was re-fired.

Mr. Aitkin—He told us about that, that is what I had reference to.

Mr. Vroom—That is what I was talking about in my last question.

Q. Now, why was firing two kilns less labor to you than firing at Alpaugh & Magowan's, where they had nine kilns?

A. Well, there is no laborious work about it, nothing but to just to walk around; there is a difference in handling a pick and shovel and seeing that it is done.

The Vice-Chancellor—I think he made that very clear. In the one case somebody else did the work, and in the other case he did it.

James Barlow, a witness produced on behalf of the complainants, in rebuttal, being duly sworn according to law, testified as follows:

Direct examination (by Mr. Aitkin):

Q. You are one of the complainants in this case, Mr. Barlow?

A. Yes, sir.

A. Also the modeling; Mr. Alpaugh made the remark, if I did that I had plenty to do; Mr. Magowan then made me an offer to enter their employ?

Q. Did he ask you what you were getting there?

A. Yes, sir.

Q. What did you tell him?

A. Thirty dollars per week.

Q. Did he make you any offer?

A. He then made me an offer of $30 per week, with 10 per cent. of the net profits of the business; I told him that I could not consider his proposition, as I was then under contract, with Mr. James Moses, for five years, two years of which had not expired, therefore I could not entertain his proposition; he asked me if I would not try to get my release; I told him I would speak to Mr. Moses on the matter, and he distinctly told me that he would not release me.

Q. Did you make that report to Mr. Magowan?

A. I made that report; Mr. Magowan came to see me the next day, at noon, at my house, and I made that report; he still pressed me to talk with Mr. Moses, and see if he would not release me.

Q. Did he make you any additional offer?

A. Not at that interview; he came to me the next day, and I told him that I had been talking to Mr. Moses about it, and that Mr. Moses still refused to release me; Mr. Magowan then said that if I would come to them, they would give me $60 per week and ten per cent. of the net profits; I still declined to entertain the proposition on account of the contract I had with Mr. Moses; he then said that he would not only give me $60 per week salary and the ten per cent. of the profits; but I told him previous to that that Mr. Moses had threatened to sue me if I left his employ without his consent; I told Mr. Magowan this, and he then told me that he would guarantee to stand between me and Mr. Moses, in case Mr. Moses should sue me and obtain damages.

Q. Did he make any remark about what advantages it would be to you to leave?

A. Not at that time.

Q. What it would be worth to you if you would leave?

A. Not at that time.

Q. Well, go on?

A. He left me then; he said he would see me the next day; he came to me for a whole week, at noon hours, to see me in regard to the matter; at the last interview, I told him that I could not possibly accept his proposition, that Mr. Moses had threatened to sue me, and had also increased my salary as an inducement for me to stay; Mr. Moses told me that he would be a fool to release me from my engagement, as it would be $10,000 out of his pocket the first year if he did; so I told Mr. Magowan that, and he was more anxious still to secure my services; and he told me he would pay me $60 per week and ten per cent. of the net profits, if I would come with them.

Q. Did he send anybody to see you?

A. The next time was on a Friday evening in April, early April, 1883; he sent Mr. Sterling to me to ask me if I had changed my mind in regard to coming to them; I told Mr. Sterling to tell Mr. Magowan if he offered me the whole of his pottery I could not come in his employ; I told him I had been consulting my best friends about the matter, and I could not see my way clear to leave Mr. Moses and come with them.

Q. What occurred then?

A. The next time I heard anything about Mr. Magowan wanting me was, I think, two nights afterwards—no, it would be on the Monday night following; I am not sure about the date, but a few days afterwards Mr. Wood came down to see me one evening, and he told me, to my surprise, that Mr. Magowan had been up to see him, I think it was the night previous, and had made him an offer to enter his employ as a manager; Mr. Wood told me that Mr. Magowan requested him to come and see me, and to use all the influence he possibly could to get me to change my mind, and to also enter their employ along with Mr. Wood; Mr. Wood told me that Mr. Magowan had been to see him, and had offered him $60 per week as salary and also a guaranty profit of $2,000 per year besides, and Mr. Wood told me Mr. Magowan said he would pay me the same if I

would consent to come with him along with Mr. Wood; I told Mr. Wood that I would think the matter over; I think Mr. Wood come to me the night following, I think so, and told me that Mr. Magowan was coming up to their house on the following Sunday afternoon, and he would like me to be there; I promised Mr. Wood I would come to his house on the Sunday afternoon, and would meet Mr. Magowan, and then I would give my answer to Mr. Magowan.

Q. Did you meet them?

A. I met them on the following Sunday afternoon; Mr. Magowan went over the whole ground that he had done with Mr. Wood, that is, in reference to salaries and guarantees.

Q. Guarantees of what?

A. Guarantee profits; he said if I would—he said that since he had seen me previously he had been talking the matter over with Mr. Alpaugh, and they decided, as they had so large a pottery, they would need two managers; he said they intended to run their pottery to its fullest capacity all the year round, and he thought they would need two managers, and, particularly, that I was a modeler, they would want me to do the modeling, which would take up a great deal of my time, and they would want another man.

Q. Did they say anything about their ability to sell the goods?

A. Yes, sir; Mr. Magowan said that Mr. Alpaugh was the best salesman there was in the country; he said that they had no doubt that Mr. Alpaugh would be enabled to sell all the goods that two such potteries as that could produce; he said, "I have not the least doubt we shall make from $50,000 to $60,000 a year profit;" he said, "We will give you the $60 per week and the $2,000 per year guaranteed profit;" he said, "That will make your position worth about $5,000 per year;" he said, "We will give you that; if anything happens we will give you that amount, if we don't make any profits. We intend to run our pottery so full, and Mr. Alpaugh will be able to sell the goods, and we will make large profits and be able to pay that amount of salary and profits."

Q. $5,000 in addition to what you might otherwise make out of the profits?

A. He told me that $5,000 would be a sure thing; we could rely on that. Mr. Wood and I had previously talked about going into business ourselves. He said, "That would be better than going into business because you don't risk anything."

Q. Was anything said about indemnifying you?

A. I said from the promises he made during that interview I would consider the matter; I asked Mr. Magowan, "You told Mr. Wood you would be willing to indemnify me in case Mr. Moses would sue me, will you put that in writing?" he said, "Yes;" then I said, "I consent to come;" then he said, "You can get the agreements drawn out; you can go to your own lawyer and have the agreements drawn out according to the proposition I made to you, and bring them out to the rubber works and we will sign them."

Q. Was anything said about the time the agreement should be drawn for?

A. Oh, yes, he wanted us to sign an agreement for five years; I objected to that personally; I wanted to sign for one year only, as I did not feel like confining myself for five years; he said that they would like to make it for three years and two months; he said, "by that time all our paper will have matured, and we don't want to make any change in the management until the expiration of that time."

Q. You agreed to that?

A. I agreed to that; yes, sir.

Q. You were to meet when?

A. We were to meet the following day—that was Monday afternoon—at the rubber works; I and Mr. Wood; Mr. Wood went down in the morning and got the agreements drawn up; I met Mr. Wood and we went out to the rubber works; we met there Mr. Alpaugh and Mr. Magowan; Mr. Wood was introduced to Mr. Alpaugh by Mr. Magowan. Mr. Wood handed the agreements to Mr. Magowan and he read them, read them over twice; he then handed them to Mr. Alpaugh, and Mr. Alpaugh read them; he returned them to Mr. Magowan. Mr. Magowan pronounced them to be right, they were drawn up according to the arrange-

ment. Mr. Wood made the remark, "I think they run about the same as you said." Mr. Magowan said, "Yes, the same as I said."

Q. Was anything said about the part of indemnifying you?

A. Yes, sir; Mr. Alpaugh when he read that he said, "Of course, in case Mr. Moses should sue you, you will defend the suit." I said, "Of course I will." "Well, then," he said, "everything is all right."

Q. The agreements were executed?

A. Yes, sir.

Q. In the copy which Messrs. Magowan and Alpaugh have there was an interpolation that you, yourself, would do the modeling. Have you any recollection when that was put there?

A. No, sir; I don't know; I never saw it put there. All I know about it is this, that Mr. Magowan, in reading over the agreement the second time, he said, "There is one thing that has been forgotten, and that is that you shall do the modeling; but that is a slight matter," he said, "that is understood; I will make a memorandum of it." That is all I know about it. When I signed the agreement I didn't read it afterwards; didn't read it at the time I signed it; I didn't see that writing; it may be there and may not, I don't know; I couldn't say.

Q. During and in all the conversations leading to this agreement, did you make any representations in regard to your abilities to make any kind of ware successfully, or any particular kind of ware which would render or yield to the firm large amounts of profits?

A. None whatever; I was never asked in regard to the matter. Mr. Magowan, when he first came to see me, said he wanted me to make such ware as I made for James Moses.

Q. Did you make any representations or remarks in regard to the profits you could make for them on the plant which they had?

A. No, sir; I didn't know anything about the plant.

Q. Had you ever been on their ground?

A. I never was on their ground until I went to take charge.

Q. Did you present any samples of ware you had made, and could make, and promise that you would make?

A. No, sir; I didn't have any samples.

Q. You gave notice to your employers, did you, that you were going to leave?

A. Yes, sir.

Q. And entered upon the discharge of your duties as one of the managers of the pottery?

A. Yes, sir.

Q. What kind of ware did you make?

A. The first kind of ware we made was C. C. and white granite.

Q. Do you know how long a period of time you continued to make that ware?

A. I don't know exactly; I have no dates of reference; I think we made it probably two months before we got any of the imperial china around.

Q. Did you proceed at once to make models of ware?

A. Yes, sir.

Q. Did you make them after any design that you had learned or had worked in Moses' pottery?

A. The first shape that I modeled was the Brunswick shape; that was the first dinner set—the first dinner service.

Q. What was that copied after?

A. They told me that they wanted a shape as near like Mr. Moses' as they could possibly get it without conflicting with his patent right; I had modeled one there previously which had proved very successful, and they were anxious to get one as near like that as possible; so I started in to make a shape as near like that as I durst, without conflicting with Mr. Moses' patent; and Mr. Magowan, and Mr. Alpaugh, too, were highly pleased with the result.

Q. Did you then continue to make that style of work all the time you were with them?

A. All the time I was with them they made that shape.

Q. Do you know whether they still continue?

A. I believe so.

Q. Do you recollect the drawing of the first kiln of the imperial china?

A. I do.

Q. Who were present?

A. Mr. Alpaugh and myself and Mr. Wood.

Q. What did they say about it after it came out?

A. Mr. Alpaugh was highly delighted with the result; he picked up the ware and examined it and said that he had never been accustomed too see such ware in their ware-rooms; he said he felt like dancing, he was so pleased with the result of the first imperial china; he said, "If we can make such ware as that we can go on all right."

Q. Did Mr. Alpaugh take you around to see the kind of ware that was made previously?

A. Yes, sir; a short time after we entered there, Mr. Alpaugh invited me to go around the gloss ware-room to examine Coxons' old stock, he accompanied me around; we examined the ware; we went through bin after bin, took pieces and examined it, and found it composed largely of blue edge and crazed ware; Mr. Alpaugh admitted at the time that it was a hard looking stock.

Q. Did you ever say at any time that you would not enter the service of Alpaugh & Magowan unless you were accompanied by Mr. Wood?

A. Never; I would have preferred to have gone myself.

Q. (By the Vice-Chancellor)—That is, gone alone, without Mr. Wood, do you mean?

A. Yes, sir.

Q. (Further direct)—Why was that?

A. Well, if there was any honor attached to the position I felt like having it all; that was the only objection I had.

Q. Did you ever state to Mr. Magowan that the reputation which the Mercer Co. had obtained for their work, was the result of your mixing?

A. No, sir.

Q. Did the imperial china which you made continue to give satisfaction?

A. Yes, sir; I believe it did; I never heard any complaints.

Q. No complaints were ever made to you in regard to it?

A. No, sir; no complaints in regard to it.

Q. Did you continue to make other models of other styles of it?

A. Yes, sir.

Q. And made it up to the time you left there?

A. Yes, sir; my next service that I modeled was the Empress service, an oval shape, which Mr. Magowan pronounced to be the handsomest thing he ever saw; I recollect his taking a piece and putting it on his mantlepiece in his parlor as an ornament.

Q. How was this ware in regard to crazing, this imperial china, did it craze much?

A. I never saw but very little of it; I believe from my experience that it stood better than any ware that I ever had seen.

Q. Did you ever make any guarantee or representation to these defendants that their ware should never craze?

A. No, sir; that would be a ridiculous thing to do; I never knew a manager in my life making any guarantee in regard to crazing; you might just as well guarantee ware against breakages as against crazes; you never do that; it is not the custom for managers to make any guarantee against crazes, to my knowledge.

Q. Had you any more of that kind of ware than is usual in potteries?

A. No, sir; I don't believe we had.

Q. How was the ware in regard to seconds and thirds?

A. Well, the question of thirds, it depends upon the manner of selection; there are two kinds of selection usually with the potters, one called "run-of-kiln" and the other "thirds;" now, we usually selected very close; Mr. Alpaugh had charge of that, and I have heard Mr. Wood complain to him very frequently of the manner of selections being too close; ware that was very slightly—that had very slight defects, and which should be put in as run-of-kiln, was put in as thirds very frequently, consequently making the amount of thirds appear very large; I remember Mr. Wood having two packages of thirds taken from the yard and brought in the packing-house, unpacked and re-selected, resulted in finding 57 per cent. of run-of-kiln goods and 43 per cent. of thirds.

Q. (By Mr. Vroom)—How many packages was that?

A. Two packages.

Q. (Further direct)—Which had all been set aside as thirds?

A. Yes, sir; along with a lot more which was out in the yard.

Q. About what time was that?

A. Well, I could not give the date; I have no remembrance of dates.

Q. What kind of ware was it?

A. It was imperial china.

Q. Had you any more positive thirds than other potteries?

A. I think not; less; I have always thought so; I would like to state here that Mr. Wood at that time—I recollect drawing Mr. Alpaugh's attention to these packages that were unpacked, and Mr. Wood asked him and told him that it would pay—asked him to have the packages unpacked that were on hand, told him he thought it would pay to have them unpacked and re-selected; Mr. Alpaugh declined doing it; he said he thought it would not pay to do it.

Q. How many packages were there in the yard at that time?

A. Well, I cannot tell from actual count, but I should judge there would be in the neighborhood of 200; there may have been 300, I cannot tell exactly, I know the yard was full of them.

Q. Did you consent to the employment of Mr. Kirkham as fireman?

A. Did I consent?

Q. Yes.

A. When we went there we needed a fireman; Mr. Magowan told us we must get the best man we could get.

Q. You got Mr. Kirkham?

A. Yes, sir; we knew of two men; we got Mr. Kirkham.

Q. Did you consider him a good fireman?

A. Yes, sir; he is a good fireman and always had the reputation of being a good fireman; that is why we engaged him.

Q. Was the compensation you agreed to pay him a fair one?

A. Yes, sir.

Q. Was there anything extravagant in it?

A. Nothing whatever; it is the ordinary amount of pay a fireman receives.

Q. Do you know of any record being kept of the drawings of the kilns?

A. No, sir; I think when we went there for a little while, for a few weeks, we did make a record; at least, we counted the kilns as they were put on the floor, but that was discontinued because Mr. Alpaugh thought it was too much trouble to keep the account.

Q. After the instructions of November, 1885, were they kept then, that you know of?

A. Yes, sir; the instructions that we got, in November, 1885, called for the kilns to be counted—for a record to be kept.

Q. Do you know whether they were kept properly or not?

A. I don't know of my own personal knowledge, but I know Mr. Mulford went around to count the kilns; he along with one of the warehousemen—warehouse boys, rather; I remember on one or two occasions being around there when he was counting the kilns, and I discovered he was not counting all the ware on the floor; I drew Mr. Mulford's attention to it; he said he would alter the figures, and I did not see him alter them, and I do not know whether he altered them or not.

Q. No record was ever presented to you?

A. No, sir; I asked Mr. Mulford at one time, when Mr. Magowan had requested me to change the count of the kilns; that is, to put it on a different basis; he wanted me to put it on piece-work system; I went to Mr. Mulford to get the count of the kilns, so that I could draw an average and base my price, per dozen, on the previous products of the kilns; Mr. Mulford told me he had never reckoned up the amount of the dozens, and he could not tell me.

Adjourned until Wednesday, March 30th, 1887, at 10 o'clock A. M.

Before His Honor John T. Bird, Vice-Chancellor.

Appearances—James S. Aitkin, Esq., counsel for said complainants; Messrs. Barker Gummere and G. D. W. Vroom, counsel for the said defendants.

Transcript of shorthand report of evidence taken upon the continuation of the trial of the above stated cause on Wednesday, the 30th day of March, A. D. 1887, at the Vice-Chancellor's Chambers, Trenton, N. J.

Robert Sterling, a witness produced on the part of the complainants, having been duly sworn according to law, deposeth and saith:

Direct examination (by Mr. Aitkin):

Q. You live at Trenton?

A. Yes, sir.

Q. What is your business?

A. A potter.

Q. What pottery are you employed in?

A. The Mercer Pottery.

Q. Do you know James Barlow?

A. I do.

Q. Do you know Mr. Magowan?

A. Yes, sir.

Q. Did Mr. Magowan ever speak to you in regard to getting an introduction to James Barlow with reference to employing him?

A. Yes, sir.

Q. When?

A. I could not exactly give you the date.

Q. Was it in 1883?

A. It was about 1883.

Q. What did he say to you at that time?

A. Well, sir, he came to my house in reference to Mr. Barlow; do you wish me to tell what he said?

Q. Yes; state all that he said.

A. He came to my house and said, "You are employed

at the Mercer Pottery, are you not?" I said, "Yes;" he said, "Are you acquainted with Mr. Barlow?" I said, "Yes, sir;" he said, "Does he manage that pottery?" I said, "Yes, sir;" he said, "Does he do the mixing and do all the management?" I said, "Yes, sir; he does." "Well," he said, "we are going to start a big concern here in Trenton and want to get somebody;" and then he said, "How is he as a manager?" I said, "As a manager I don't suppose you could get any better." "Well," he said, "I would like to get an interview with Mr. Barlow; can you bring Mr. Barlow to me, or me to him?" I said, "I don't know;" and, says I, "It is a kind of"—I used some word that I cannot exactly express now, but I meant that it was a delicate position to place me in, as he was my boss at the time, and I didn't like to approach him on that subject. He said, "That don't make any difference so long as he is going to better himself." Then I said, "Yes; I would do it—I would do what I could." He first proposed that I should bring Mr. Barlow to his house that evening—it was on a Saturday evening that he came to my house—but after a little thought he thought it would be better not to bring Mr. Barlow to his house, because he lived right across the way from Mr. Moses' house. He said, "If you can manage to have a meeting at your house right here you can send me word to that effect." I said I would do it—that I would go and see Mr. Barlow and see what could be arranged. So, then I went and saw Mr. Barlow.

Q. One moment before proceeding any further; did he say anything to you about getting him at any price?

A. Well, I could not exactly say whether he said that at that time or afterwards; but he did, at one time, say that money was no object, that he wanted Mr. Barlow.

Q. Well, go on.

A. Then I went to see Mr. Barlow, and at that meeting I arranged with Mr. Barlow to meet Mr. Magowan at my house on the next day. That was Sunday morning, I think. I went down to Mr. Magowan's house that evening and told him of the arrangement that we had made, and that he was to meet Mr. Barlow at my house the next day. The next day Mr. Magowan and Mr. Alpaugh both came to my house

and met Mr. Barlow there, and I introduced him to the gentlemen, and what conversation was had after that I don't know because I retired from the room.

Q. Did Mr. Magowan send you to see Mr. Barlow at different times after that?

A. Yes, sir.

Q. Did he afterwards send you to James Barlow with messages?

A. Yes, sir.

Q. How long afterwards?

A. I should judge in the neighborhood of a week.

Q. What was the message?

A. He came to my house one evening, in his carriage, and wanted me to go and see Mr. Barlow, and see if he hadn't made up his mind in reference to the matter; and I went to Mr. Barlow's house, and he came out on the sidewalk and told me to take word to Mr. Magowan that he could not conscientiously accept his offer, as he was already under an agreement with Mr. Moses, and, furthermore, he said he had consulted his most intimate friend in the matter, and he could not think of accepting it—his conscience would not permit him, or words to that effect; I said, "Will I tell Mr. Magowan so?" he said, "Yes, that is the message you may return to him;" I then went back; our interview was very short; I went to Mr. Magowan and told him; said I, "Frank, I guess the jig is up; I don't think you can get that man;" says he, "What is the matter?" I said, "His conscience won't permit him to accept the position, and, furthermore, he has consulted his most intimate friend on the matter, and he won't accept; "Well," he says, "who is his most intimate friend?" I said, "I don't exactly know, but I would say it was Mr. Wood, his brother-in-law; he says, "Who is he, and where is he to be found, and what does he do?" I said, "He is the manager at the East Trenton Pottery, but where he lives I cannot say; but he must live up around the pottery somewhere, and if you go up around that direction and make inquiries of any one where he lives, you can easily find out;" "Well," he says, "I am going up to-morrow in my carriage, and I will stop up that way and try and find him;" then he drove away from my

house that evening, and after that I have no further knowledge of the matter.

Cross-examined (by Mr Vroom):

Q. You told him that Mr. Wood was his brother-in-law?

A. Yes, sir.

Q. And tnat you believed he was his most intimate friend, and the person that he took advice from with reference to that matter?

A. Yes, sir.

Q. Was it at your suggestion that Mr. Magowan went to see Mr. Wood at that time?

A. Yes, sir.

Q. When did Mr. Barlow first make objection to accepting the position?

A. Well, that was the first time I ever heard any objection.

Q. During your previous conversations he made no objection upon the score of conscience, did he?

A. I never was there during their interviews.

Q. I mean interviews you had with him?

A. I hadn't had any with him before that.

Q. Hadn't you approached him for Mr. Magowan?

A. No, sir.

Q. Had you heard him say anything about it?

A. No, sir.

Q. Hadn't he talked to you about it?

A. No, sir.

Q. Didn't you say anything to him when you first approached him as to what Magowan wanted of him?

A. I did; I explained the matter to him just as Mr. Magowan had asked me to the first time I went there.

Q. Well, did Mr. Barlow object to it then?

A. He studied over it a short time, and then he concluded that he would have an interview with Mr. Magowan.

Q. He made no objection then?

A. No, sir; he didn't make any particular objection to it at that time.

James Foskit, a witness produced on the part of the complainants, having been duly sworn according to law, deposeth and saith:

Direct examination (by Mr. Aitkin):

Q. You are engaged in the pottery business at the present time?

A. Yes, sir.

Q. And have been how long?

A. Thirty-five years.

Q. How long have you been in this country?

A. Four and a half years.

Q. What is your special department in the pottery?

A. Printing.

Q. Have you ever been, formerly, in a printing department in England?

A. Yes, sir.

Q. And had charge of the hands?

A. Yes, sir.

Q. And did you prepare the oils and colors for your men to use in your department?

A. All of the oils and some of the colors.

Q. And you were responsible for the quality of the work produced by your men?

A. Yes, sir.

Q. Have you ever worked for Alpaugh & Magowan.

A. Yes, sir.

Q. When and how long?

A. Three years and three months.

Q. When did you leave them?

A. Last Saturday.

Q. Did you leave on your own account?

A. Yes, sir.

Q. While you were there did you prepare the oils and instruct the workmen?

A. The first two years I did.

Q. Did you do all the printing?

A. No, sir; I did part of it; I filled up my time with printing.

Q. What was your position while there?

A. Well, I looked after the work a little and filled up my time on the press.

Q. Were you a foreman over a department?

A. Well, not exactly.

Q Did you have expereience in England in printing both on the glossed and biscuit kiln?

A. Yes, sir.

Q. Did you do so for Alpaugh & Magowan?

A. Yes, sir.

Q. Do you recollect the plates that were printed on the glaze there?

A. What?

Q. The plates that were printed on the glaze or on the biscuit?

A. They were printed both on the glaze and on the biscuit.

Q. Did you ever see them come out of the kilns of different shades of color, some light and some dark and the colors run with the glaze, in England?

A. Yes, sir.

Q. How did they compare, taken altogether, as it ran with the printed ware you saw come out of Alpaugh & Magowan's?

A. Do you mean on the biscuit?

Q. Yes; I refer to the printed ware, both on the glaze and on the biscuit.

A. I have seen a great deal worse printing in England on the biscuit than I did there.

Q. How would it compare with what you saw in England?

A. Favorably.

Q. Do you know whether Mr. Wood at times used to run work through the kilns that was not properly fired?

A. Yes, sir; sometimes.

Q. Do you know how much there was of it?

A. Quite some of it, at times.

Q. How would it come out after it was fired?

A. Some of it would be easy fired and some would be hard fired; and it makes a good deal of difference in the shade when it comes out of the glossed kiln.

Q. What was the proportion of re-fired goods compared with the gross amount manufactured, small or great?

A. Well, I should think it was about on the average with what we had in the old country.

Q. Did you see the new engravings and copper plates and patterns used during the time Mr. Wood and Mr. Barlow were there?

A. Yes, sir.

Q. Do you know whether they continued using them after Wood and Barlow left?

A. Yes, sir; more or less.

Q. Did they use the printing press afterwards?

A. Yes, sir.

Q. And everything else that was in connection with the engraving part was continued to be used after they left?

A. Yes, sir; more or less, as they had occasion to.

Q. Has the quality of the printing been improved since Mr. Wood left?

A. Not very much.

Q. Has it at all?

A. I don't think it has.

Q. Is it as good?

A. Well, we haven't done it on the biscuit at all, it is on the glossed, and that presents a greater difficulty than it does the other way.

Q. When you were printing on the glossed, during the time you speak of, was there much crazed ware?

A. Yes, sir; we had more or less, sometimes.

Q. Was there any more or less than is usual at other potteries?

A. No, sir.

Q. Can you tell whether a plate is printed on the glaze or under the glaze?

A. Yes, sir.

Q (Showing witness *Exhibit 14*)—Look at that and see whether it is printed on the glaze or not?

A. On the biscuit.

Q. What you call underglazed?

A. Yes, sir.

At this point six plates of the description shown the witness were marked *Exhibit 14.*

Cross-examined (by Mr. Vroom):

Q. What department of the pottery business were you brought up in?

A. Printing.

Q. Altogether?

A. Yes, sir.

Q. You learned that in England?

A. Yes, sir.

Q. That part of the trade?

A. Yes, sir.

Q. Whereabouts?

A. With Sprowl & Bishop.

Q. You worked there how long?

A. 16 years.

Q. Is that the only part of the business you looked after?

A. Yes, sir.

Q. That includes what, the mixing of the colors as well as transferring?

A. Not necessarily so.

Q. Is it not the usual course of the trade that a person who practices that branch of the trade understands transferring, as they call it?

A. No, sir; he has to print; he takes off the impression.

Q. You then went beyond that, you understood the mixing of the colors?

A. Yes, sir.

Q. Used for that purpose?

A. Yes, sir; more or less.

Q. What do you mean by more or less?

A. I mean that some colors were bought already prepared, and others we prepared ourselves

Q. But at the same time, even those that were bought already prepared, you thoroughly understood how to use them?

A. Yes, sir.

Q. And understood the use of them?

A. Well, we simply had to mix them with oil.

Q. That was all you had to do?

A. Yes, sir.

Q. But you had to understand the proportion of the color,

and how they would come out after they were used, didn't you?

A. Yes, sir; and in the use of the oil used for reducing the shade.

Q. You profess to understand that too?

A. Yes, sir.

Q. Did you do that part of the work at Alpaugh & Magowan's?

A. In the first two years I did not.

Q. Not at all?

A. No, sir.

Q. Who did that?

A. Mr. Wood.

Q. Then, that part of your work covered a period of what time?

A. Just for fifteen months back.

Q. That ran up, then, to the period when you left?

A. Yes, sir.

Q. You didn't do any of the mixing of the colors while he was there?

A. No, sir.

Q. You only had charge of the mixing of the colors after he left?

A. Yes, sir.

Q. Who had the superintendency of the printing and transferring?

A. Well, each one was supposed to do his own work.

Q. But who had charge of it?

A. I did.

Q. Who else?

A. Mr. Wood.

Q. Well, Mr. Wood was superintendent of that department, wasn't he?

A. He was superintendent of the whole business.

Q. Yes, and of that department, too?

A. He had the care of it all the time.

Q. Did you all act under him?

A. Yes, sir.

Q. Do you remember when you first undertook to transfer printing on the biscuit?

A. Yes, sir.

Q. Were you there then?

A. Yes, sir.

Q. Prior to that, how had the decoration been made?

A. I think the first two or three months I was there we did it on the glossed.

Q. And after that you did it how?

A. On the biscuit.

Q. That wasn't successful, was it?

A. Yes, sir; I considered it was.

Q. Were any of the goods returned?

A. That may be so.

Q. Do you know?

A. Yes, sir.

Q. Some were returned?

A. Yes, sir; after a long period.

Q. What was the trouble?

A. There was crazing.

Q. How much crazing?

A. I could not say, but I saw some pieces.

Q. Are you sufficient of an expert to give the reason why that crazing took place?

A. Yes, sir; there was several causes.

Q. Recollect I am talking about this particular ware.

A. Yes, sir; in some cases of course we had to rush the things through when orders were wanted, and I called Mr. Wood's attention sometimes to the fact that this ware wasn't fit for printing, it was a little bit too hard or a little bit too easy fired; "Well," he said, "the orders must go through; that the goods were wanted, and they must go through."

Q. Mr. Wood was the superintendent and had charge of the preparation of that very ware.

A. I understood him it was printed on special orders to get it through.

Q. But he was the man in charge?

A. Yes, sir; and he ordered me to do it that way sometimes, and sometimes he ordered me to stop.

Q. Sometimes he ordered you to stop when you protested against it?

A. Sometimes he said, "don't do it."

Q. You have just said that some of this bad ware was brought to his attention?

A. Yes, sir; and sometimes he would say, "Shut right off, don't do it."

Q. Did you ever complain to any of the firm about that?

A. No, sir; it wasn't my place.

Q. Not your place?

A. No, sir.

Q. Although you knew that that ware would not come out well?

A. Mr. Wood was my boss; I had to appeal to him.

Q. Is that the only reason you can give, why it didn't come out successfully?

A. Well, that is the main reason; there were other reasons.

Q. How long after that did they discontinue printing upon the biscuit?

A. They worked on it nearly two years.

Q. And then it was entirely discontinued?

A. Yes, sir; although it was a long time before it came back crazed; but I have seen the same thing in the old country; I have ware in my house to-day, from one of the largest firms in England, that has not left there two years, and that is crazed and was crazed before it had been used two months?

Q. (By the Court)—Did you bring it with you?

A. No, sir; my wife brought it out two years ago, and that crazed from the same trouble that we have here.

Henry Brunt, a witness produced on the part of the complainants, having been duly sworn according to law, deposeth and saith:

Direct examination (by Mr. Aitkin):

Q. What is your occupation?

A. Manager of a pottery.

Q. Where?

A. At Baltimore, Maryland.

Q. How long have you been there?

A. About one year, sir.

Q. Previous to that, where were you employed?

A. At Alpaugh & Magowan's, in their pottery.

Q. How long were you there?

A. About two years and nine months—two years and seven months or six months.

Q. How long have you been connected with the pottery business?

A. About 27 years.

Q. In England and in this country altogether?

A. Yes, sir.

Q. How did you come to leave the Empire Company?

A. I left when the trouble occurred between the managers and the bosses; I was engaged by Barlow, and when he ceased to be manager I ceased to be foreman.

Q. You were foreman of what?

A. Of the making department; I had charge of the shops and the slip-house and the biscuit kilns.

Q Making department?

A. Yes, sir; making the goods.

Q. What had you cognizance of?

A. I saw everything that occurred between the biscuit ware-room and the slip-house.

Q. Did your position and experience enable you to speak knowingly of what passed there in the process of manufacture?

A. Yes, sir; certainly, what passed under my notice.

Q. When you left there did you receive a recommendation from Mr. Alpaugh to your present employers?

A. He recommended me to my present employers, and it was through his recommendation I got my present situation.

Q. When Messrs. Wood and Barlow took charge of the Empire Pottery what class of ware did they make?

A. They made white granite and C. C. ware and imperial china; previous to their going to the pottery it had been white granite and C. C. ware, and when I went there the pottery was in a pretty low condition; the ware that they had been making was thick, heavy, clumsy and badly made, and very unartistic goods.

Q. Was there any particular improvement took place in the general goods while you were there?

A. Oh, yes, sir; there was an improvement right along the line; I should say, when I went there, I should rank the pottery as a third-rate pottery, and when I left there at the end of the two years and seven months it was certainly a first-rate pottery; the wares that we made were thin, graceful and artistic,—I am speaking of shapes only, not of decoration,—they were artistic and equal to any in America, and superior to any except about what is made in three potteries.

Q. Were their shapes imitated by other potteries?

A. Yes, sir; their shapes were imitated both in this country and in England.

Q. Did you take particular notice of the wares that came from the kilns?

A. From the biscuit kilns I did; my duties as foreman led me to examine the ware after it was taken from the biscuit kilns in order to see whether the fire had developed any faults in making, so that I could remedy them in the future.

Q. What was the general character of the ware—what I mean is, was it very good or very bad?

A. Invariably good.

Q. Did you see any of the wares come in different colors, some blue, some yellow and so on?

A. Well, it is impossible to get just exactly one tint even out of one kiln, but our ware came out quite as regular, or more regular, in tint than I have ever seen it in most other potteries, that is, speaking of the color of the body.

Q. Well, do you say that the proportion was greater or smaller than that made in other potteries?

A. Well, I should say that the quality of the goods that they produced was better than that produced at most potteries; of course the firm was a young firm, and was very anxious to make themselves a name for making good ware, and they used to select very close and put ware out for seconds that I, as a practical potter, should not have put out; Mr. Alpaugh and Mr. Magowan too, when I left there, expressed themselves as being perfectly satisfied with the quality of the ware, and Mr. Young, their present manager, also expressed himself in the presence of Alpaugh and

Magowan to the effect that he had never seen better ware made in all his life, and, if he could only maintain the degree of excellence that we had attained, he should be perfectly satisfied.

Q. Suppose a piece of ware is one-thirty-second of an inch thick on one side and one-eighth of an inch thick on the other, what would that be caused by?

A. It would be caused by unskillful workmanship.

Q. Would unskillful mixing have anything to do with it?

A. No, sir; it would be impossible to produce such a result from any kind of mixing; would you please repeat your question?

Q. (Question repeated.)

A. It would be produced by unskillful workmanship.

Q. What were your opportunities of seeing the ware as it came from the kilns?

A. When a biscuit kiln was drawn I used to go to the biscuit ware-room and examine the ware, to see if there were any defects in making that the fire had developed.

Q. Did you see any large quantity of soft-fired biscuit ware left in the saggers and concealed, waiting to be re-fired?

A. I never saw any ware concealed, but it is the universal custom of the trade when there is any soft-fired ware drawn out of a kiln to leave it in the saggers and set it up in the kiln sheds, in order to save handling it in the biscuit ware-room; it saves selecting it and returning it to the biscuit kiln, and it is the custom of the trade to do that in order to save trouble and expense.

Q. And then you re-fired it at the next opportunity?

A. Yes, sir.

Q. Did you see three and one-half kilns full of soft-fired ware left in the saggers to be re-fired in one week?

A. No, sir; that would be almost impossible for there to be three and a half kilns in one week; it would be almost impossible for there to be that much soft-fired ware, if there was it would bring the pottery to a stand-still—everything would be stopped up.

Q. Would it be possible for three and one-half kilns to be soft-fired in one week without your knowledge?

A. No, sir; nor one-half of a kiln.

Q. Would it be possible for three and a half kilns of soft-fired ware to be re-fired in one week, and that to be repeated thirty different times without your knowledge?

A. No, sir; such a thing would be utterly impossible in any pottery; it would bring any pottery to a complete stand-still.

Q. Did you ever hear Mr. Alpaugh complain of there being a large quantity of soft-fired biscuit ware there, or did you ever hear any of their workmen complain of it?

A. No, sir; I never heard any complaint of that; I might have heard them say that there was a little soft-fired ware, that is a thing that occurs in any place, but I never heard Mr. Alpaugh say it; I heard Mr. Alpaugh express himself as being satisfied with the firing.

Q. What was the character of the firing generally while you were there, as compared with them in other potteries?

A. Quite as good as it is in other potteries, and a little better; the foreman was a careful, sober and attentive man.

Q. That is Mr. Kirkham?

A. Yes, sir.

Q. Did you ever hear Mr. Alpaugh make complaint of Mr. Kirkham as foreman?

A. No, sir; I never did.

Q. Did you ever hear anything to the contrary?

A. Yes; I have heard Mr. Kirkham on one occasion ask Mr. Alpaugh how we were coming out, and he expressed himself as being perfectly satisfied.

Q. Do you recollect that vitrified hotel ware that was manufactured, and, if so, how much clay was there made for that ware, and how much was left unused?

A. As near as I can remember I think there were six presses made, and there would be about one ton in a press; now, as to what was left unused I am not so clear about, but there would be some certainly, refuse clay, and probably the refuse clay from six presses would be equal to one press.

Q. That is about one ton?

A. Yes, sir; substantially one ton.

Q. How much would that cost per ton?

A. What, the clay?

Q. Yes.

A. Well, I should say the raw materials would cost about $14.

Q. Made?

A. Made into clay. It would cost about $1.60 to make it up into clay; it would cost $12 raw—$12 per ton raw and about $1.60 for making it into clay—so that you might say $14 made into clay.

Q. Have you any means for judging how much was paid for making the clay into ware?

A. Well, most of the vitrified hotel ware was made up into plates and small dishes and bakers and cups and saucers.

Q. Take an average for it, what would be the average?

A. Well, a seven-inch plate would be the average of what it would cost, and a seven-inch plate in hotel ware weighs about a pound and a half; it would cost about a cent for every pound and a-half of clay; say 1,200 pounds of clay cost about $80 to make it up in clay.

Q. To make up how many?

A. To make up the six presses.

Q. All that was made?

A. Yes, sir.

Q. How much would it cost to fire a biscuit kiln?

A. To fire a biscuit kiln it would cost about $140; it varies; it is a little more in some places and in other places less.

Q. How many of those plates would there be in a kiln?

A. In an average biscuit kiln there is 3,000 dozens, counting twelve to the dozen, and there would be about 650 dozens according to that, about one-quarter of a kiln, and a quarter of $164 is $41, which is about what it would cost to fire it.

Q. How much altogether?

A. Reckoning the clay, about $200 or a little over.

Q. For all the vitrified hotel ware that was made?

A. Yes, sir; and put into the biscuit ware-room.

Q. Were any special saggers made or used in which to place the vitrified china?

A. No, sir; there was no necessity for any; the same

saggers used for ordinary goods were used also for the vitrified china.

Q. Were there any shapes or models for the vitrified china not used for imperial china?

A. There were very few, if any; all the plates that had been modeled were used, and the dishes and saucers were used; the thing that they had to be most particular about was the capacity of the cup being for hotel purposes, and, being made of imperial china, it would make them a little larger, but we got over with that difficulty by taking a piece off the top of the model and reducing the capacity of the cup.

Q. Do you know whether or not any money was lost in modeling for hotel vitrified china?

A. Very little, if any.

Q. What they had on hand, was that worth sufficient to pay for the experiment?

A. Well, I should think if the ware was put into the glossed show-room it would more than cover it.

Q. It was in the biscuit ware-room when you left?

A. Yes, sir; I believe it was when I left.

Q. Well, did you hear Mr. Barlow say anything to Mr. Magowan about the clay with respect to the clays getting mixed for that ware and the other wares in the shops?

A. No, sir; I cannot say that I ever did, but if he did say so—(Interrupted).

Q. Well, never mind if you didn't hear it; I asked if you heard him say anything about the clay getting mixed?

A. No, sir; I don't think I did, but if he did, it was quite correct; the chief difficulty we had with it was that the imperial china clay and the hotel vitrified ware clay when they were both dry it was impossible to tell the difference between the two, and they would get mixed in the shop and that caused considerable trouble in the mixing; I remember Mr. Wood going around on one occasion and impressing upon me very clearly to be careful not to get the scraps from the refuse mixed; I don't remember Mr. Barlow saying it to Mr. Magowan, but that was the chief trouble we had.

Q. As far as you saw it go through the kiln, did you, or or not, consider it a failure—the hotel vitrified ware?

A. I only saw it go through the biscuit; but as far as I could see it in the biscuit it was good, sound, solid ware; and while I could not exactly pronounce it to be a success, yet I think the success was sufficient to justify them in going on and making it if they chose to. Of course, in an experiment in changing goods you have always got to encounter more or less loss, or more or less expense when you don't get the proper results the first time the same as you will do afterwards, but from what I saw there I think it was sufficiently good to have justified them to have gone on with it, if they chose.

Q. If they could have kept the clay separate?

A. Yes, sir; that was the chief difficulty.

Q. How about the bone china?

A. To have made the vitrified china successful it would have to be made in different shapes.

Q. Now, do you know about the bone china?

A. Yes, sir.

Q. Was the manufacture of that a failure?

A. No, sir; I should say the manufacture of bone china was a success.

Q. What class of goods did you first make in that line?

A. Art goods.

Q. How did they go through the kiln?

A. Well, considering the disadvantages we labored under, I think they came through very successfully.

Q. Had you had any experience in the manufacture of bone china previously?

A. Yes, sir; quite some. I had worked for George Jones & Sons right through their experimental stage, and during the time they brought out their china, and after that I worked as foreman for two years; and after I left Jones I was the manager of the Florence China Works for four years.

Q. How did the quality of what you saw at the Empire Works compare with what you saw made in England?

A. The quality of the goods was equal to anything made in England, or equal to anything made in England to-day.

Q. How about the materials used?

A. Well, that was one of the chief elements of success; the materials used in America are more favorable for making bone china than what they are in England; in fact, three-fourths of the materials used for making bone china in England is imported from the States and from South America.

Q. How did the loss on that compare with the loss on similar goods in England, if you know?

A. The loss would be a little more than I should expect in England, where I should have a complete command of skilled labor, but I should not have considered it excessive.

Q. Did you labor under some disadvantages in the manufacture of these wares in the Empire Pottery?

A. Oh, yes; we labored under very great disadvantages in the manufacture of it; I had generally to do with it, and I did it with the disadvantages so as to save the firm expense.

Q. How many men were employed in that line?

A. Only one, and he wasn't employed full time on bone china; he used to make imperial china.

Q. What were his wages?

A. Two dollars and fifty cents a day—$15 a week.

Q. When he left, did you continue to make some of the china ware during your leisure time?

A. I did both before he left and after he left; I continued to right along; I was very much interested in the goods, and I used to come back and work until ten o'clock at night, three or four nights in the week; Mr. Magowan had seen me there at such times, and I worked at it during all the leisure time I had, because I wanted to see the goods made and on the market; I worked at them up to the time I left there, and when I left I had a china dinner service nearly completed; it was complete as far as the biscuit set was concerned; I made it for Mr. Alpaugh, and I believe that is the only china dinner set that was ever made in America; I don't know where it is now.

Q. Were there special saggers made to fire that in?

A. No, sir; nor was any required; just the same saggers answered for all kinds of work.

Q. What kind of ware was made of that first?

A. Art goods.

Q. When did you first commence to make tea cups?

A. We had been making china for some time when we commenced to make tea cups; it seems to me we made some art tea cups first for dejuenner sets; and it seems to me that the parties was waiting to get that through successful and then wanted us to make china tea sets for the regular trade, to go along with the regular china ware.

Q. Did you see any neglect or inattention of duty on the part of Messrs. Wood and Barlow?

A. No, sir; I think they were very attentive; Mr. Barlow I know was; I was more closely connected with Mr. Barlow than I was with Mr. Wood, and I know he was very attentive to his duties.

Q. How were they in regard to the hiring of the men and fixing of the terms of hiring?

A. They were very careful; I did not have much to do with Mr. Wood; as far as the hiring of the men was concerned, I know Mr. Barlow was always very careful about hiring men to get good ones.

Q. Did they pay any more than the ordinary potteries pay?

A. No, sir; we always set our prices by other people.

Q. Do you know of their requiring workmen to do work over again when it was unskillfully done?

A. There have been cases, but I could not say just how many times; I know we used to select the thirds in the glossed ware-room, and then if there was any special loss that affected my department they would send for me, and I would send for the men, and if it could be clearly proven that it was any particular man's fault he would make them do the work over again.

Q. That is all.

Cross-examined (by Mr. Vroom):

Q. Did you learn your trade as a potter in England?

A. Yes, sir.

Q. Whereabouts?

A. I served my apprenticeship with George Jones, and also with Hillis; I was manager of the Florence China Works.

Q. Well, you learned your trade with George Jones?

A. Yes, sir.

Q. Has that, or was that, china manufactured by George Jones that you spoke of just now any comparison with the bone china made by you at the Empire Works?

A. Well, I compared it generally with the English china.

Q. But you compared it especially with his, didn't you?

A. Not especially.

Q. Do you think it was as good as the china made by him?

A. Yes, sir; I think it was as good as any china made in England.

Q Had that been produced in the Empire Pottery in the same quantities as this produced by Jones?

A. It might have been.

Q. Was it produced in paying quantities?

A. No, sir.

Q. Then it wasn't?

A. No, sir.

Q. Now, wasn't that the reason that its manufacture was discontinued?

A. I don't know, but I think—(interrupted.)

Q. Never mind; I simply asked you whether or not that was the reason it was discontinued?

A. I don't know.

Q. You don't know, then, that is all?

A. I don't know what was the reason; it never was discontinued as far as I know.

Q. Now, when you took charge, or when Wood and Barlow took charge of this pottery, I understand you to say that you made the white granite and C. C. ware?

A. Generally.

Q. That had been made there by Coxon & Company, and you found it there when you came there?

A. I did.

Q. Do you mean to say that they were more heavy, thick

and unartistic than other such ware made by others in Trenton manufacturing the same kind of ware?

A. I do; that is exactly what I mean.

Q. Do you mean to say that no other potteries in Trenton made the white granite and C. C. Ware of that same quality?

A. No, sir; I don't mean that.

Q. Well, I am speaking of it in comparison with other potteries?

A. What I meant to say was this: supposing there are twenty potteries in Trenton; there were, possibly, out of that twenty, five making the same grade of goods that the Coxons made, and the other fifteen were making a superior grade, and five out of that fifteen, very superior.

Q. That had been the general class of goods that had been made in Trenton for a great many years—the white granite and C. C ware?

A. Yes, sir; that had been made, and better goods than that.

Q. Well, now if you will be kind enough to answer my questions we shall get along better. Was not that the general grade of goods that had been made here for years in Trenton, was it or not?

A. They had been made in Trenton.

Q. And very successfully made, haven't they?

A. Well, that is a question.

Q. I am asking you the question; if you cannot answer it say so.

A. Well, I was only just thinking about it; repeat your question, please.

Q. Now, my question is whether white granite and C. C. ware had not been made very successfully in Trenton?

A. It had been made successfully in Trenton.

Q. Hadn't it been made by Coxon & Co. successfully, in Trenton?

A. The white granite and C. C. ware had been made with some degree of success by Coxon & Co., in Trenton.

Q. How soon after you went there did they commence to make the imperial china?

A. The first day that I went there they drew the first piece of imperial china out of the biscuit kilns.

Q. How soon after Wood and Barlow took charge did you go there?

A. I went there two weeks after Wood and Barlow took charge.

Q. And the first day you went there they drew the first piece of imperial china out of the kiln?

A. Yes, sir.

Q. How long afterwards did that become the staple product of that establishment?

A. I cannot give you the exact dates, but just as soon as Mr. Barlow could model it.

Q. Mr. Barlow had charge of the modeling?

A. Yes, sir.

Q. And Mr. Wood did what?

A. Mr. Wood did the mixing, and, as far as my knowledge went, he did the mixing and the looking after the kilns; what he did on the other side I could not say.

Q. Your business led you entirely in the biscuit warerooms?

A. Yes, sir; and in the clay shops and slip-house.

Q. And you were instructed to be there, were you not, during all the time you were employed?

A. Yes, sir.

Q. And that was your special department?

A. Yes, sir.

Q. Now, Mr. Brunt, you say that they immediately commenced to manufacture this imperial china. How soon after that did they discontinue the making of the white granite and C. C. ware?

A. Well, we dropped out as we got more shapes modeled; we first dropped out of the C. C. ware, that being the inferior class of goods, and then as we got further advanced we dropped out of the white granite and made imperial china altogether.

Q. And then the manufacture continued entirely of imperial china?

A. Yes, sir.

Q. Now, with reference to decoration, do you know anything about that?

A. I don't know anything about that.

Q. You don't?

A. No, sir.

Q. About the under-glazed transferring. Do you know anything about that at all?

A. No, sir.

Q. Do you know about the firing of the goods?

A. Yes, sir; the biscuit firing.

Q. You know nothing of it after that?

A No, sir.

Q. Now, do you mean to say that you never knew of any quantity of soft-fired ware, not properly fired, being taken from the kilns?

A. No, sir; I don't mean that; this gentleman [pointing to Mr. Aitkin] asked me a pointed question—did I know of three and a half kilns of soft-fired ware in one week, and I said no.

Q. Don't you know there was frequently badly-fired ware taken from the kilns?

A. Well, not frequently, but it is a general occurrence for there to be soft-fired ware; the kiln is sixteen feet in diameter, and the ware that is closest to the fire is harder fired than that in the middle of the kiln, and it is not of unusual occurrence for there to be soft-fired ware in the middle of the kiln.

Q. Don't you know of large quantities of ware having been taken from the biscuit ware-room to be re-fired?

A. Not large quantities?

Q. Well, considerable quantities?

A. No, sir; no more than I would expect to find in any pottery; I consider the firing there was a little above the average.

Q. When did you ever hear Mr. Alpaugh praise the firing?

A I heard Mr. Kirkham, once, when I was down in the kiln-sheds, ask Mr. Alpaugh how the ware was coming out, and he said, "very good, very good;" and Mr. Kirkham

said, "was it giving satisfaction?" and Mr. Alpaugh said, "yes."

Q. About what time was that—what period of your service?

A. Well, probably it would be, at a rough calculation, about one-half way through—eighteen months.

Q. Was anybody with Mr. Alpaugh at the time you heard that conversation?

A. No, sir; he was alone.

Q. Was there anybody there but you and Mr. Kirkham and Mr. Alpaugh?

A. No, sir; Mr. Kirkham was firing the kiln, and I was down in the kiln-shed, and Mr. Alpaugh was passing through into the clay-shops.

Q. Are you sure as to the number of presses of clay that were made for the purpose of this hotel ware?

A. Not absolutely certain, but I have spoken to the best of my belief.

Q. And that is that there were no more than six presses?

A. No more than that.

Q. Might not there have been more without your knowledge?

A. There might have been seven, or there might have been eight, perhaps; but six is about as near as I can tell.

Q. Do you know why it was that the manufacture of the vitrified china was discontinued?

A. I don't; only because of the difficulty we had, which was the difficulty I have already stated.

Q. And that was what difficulty?

A. The difficulty in the clay-shops.

Q. The mingling of the clays?

A. Yes, sir.

Q. Did you know anything about the difficulties that occurred after it got into the biscuit shops?

A. No, sir.

Q. You know nothing about the clays?

A. No, sir.

Q. Or of any trouble with that?

A. No, sir.

Q. And you cannot speak of your personal knowledge why the manufacture of vitrified china was stopped?

A. No, sir; except the difficulty we found in the mingling of the clay.

Q. But that would not prevent the firing of a larger quantity in the biscuit shop?

A. No, sir; it was fired in the biscuit shop.

Q. You know nothing about the clays, I understand you?

A. No, sir; but it was good ware in the biscuit ware-room.

Q. And that is all you know about it?

A. Yes, sir.

Q. You say that you made a dinner set complete?

A. Yes, sir; out of bone china.

Q. That was the same class of goods that you spoke of as being made by George Jones' concern?

A. Yes, sir.

Q. You think that was the first ever made in this country?

A. Yes, sir.

Q. Don't you know that they make that china in other potteries here?

A. No, sir; I don't believe any one ever made one.

Q. Don't you know about their manufacture at the Greenwood Pottery?

A. Yes, sir.

Q. And don't they make it?

A. Not of that.

Q. Not of bone china?

A. No, sir.

Re-direct:

Q. You spoke about—at the commencement of the making of the imperial china about two weeks after you went there, do you know whether or not that was a sample? Do you know how soon they actually began making imperial china?

A. Do you mean in bulk?

Q. Yes.

A. It was some little time, because there would have to be a dinner service modeled as soon as he had time to model it.

Q. Can you tell us when it was; can you tell us when it was that the first kiln was drawn?

A. Well, to model a dinner service complete it would take very nearly six months—to model the thing complete.

Q. Do you recollect the Brunswick shape modeled by Mr. Barlow?

A. I do; that was the first shape modeled.

Q. Do you know whether there was much of that made or not?

A. Yes, sir; we ran the pottery on the Brunswick shape nearly two years.

Q. Was that a success?

A. Yes, sir; the pottery sold the goods, and that was the chief running of the establishment for about two years, and they made it right up to the time of my going away.

Re-cross:

Q. That was the only shape you had?

A. Oh, no, sir.

Q. I mean modeled by Mr. Barlow?

A. No, sir; he modeled three full lines of table ware.

Q. But at the time you ran the Brunswick shape?

A. That was the first; the Brunswick shape was the first modeled, and the pottery was run on it for about two years, and then he modeled another shape, and afterwards the Windsor, and that superseded them all, because it was much more beautiful than the others, and then we continued to make the Brunswick, but in smaller quantities.

Re-direct:

Q. Potteries are constantly changing shapes and adopting new models?

A. Yes, sir; that is a part of their business.

Q. Look at the plate, *Exhibit 14;* is that printed under or over the glaze?

A. That is printed under the glaze.

Q. It shows the appearance of having been used, does it?

A. I didn't take notice of that, but I can tell you in a minute (witness examined same); yes, sir; that plate has been used.

Re-cross:

Q. Are you sufficient of an expert to tell in every instance whether the decoration is under or over or on the glaze?

A. Yes, sir; I am an expert; to tell on every piece I would not say that, not every piece.

Q. You said your business only ran up to the glossed kiln?

A. That was my business at the Empire Works, but I am the manager of a pottery, and understand the whole thing.

Q. Well, I want to understand whether you can tell from examining a piece of ware whether the decoration is on the glaze or on the biscuit?

A. I can take a piece of ware in my hand like this, and, if there are certain things about it, I can say definitely that it is on or under the glaze.

Q. What are those things?

A. One is when the color is out on the body of the ware and not on the top of the glaze, and the glaze is up over it.

Q. Of course, if it is over, it is not under; we all understand that.

A. Well, that is one of the signs.

Q. Well, any others?

A. Another sign is that the lines of the printing would be very fine; if you print a piece on the gloss and fire it in the glossed kiln in order to have the color sink through the glaze, there are times that it will more or less fuse into the glaze, and the lines are not so distinct as what they are on a piece of biscuit printed ware.

Q. Well, is that invariably the case?

A. Yes, sir.

Q. Now, do you mean to say that you have never seen any printed ware on the biscuit that would flow?

A. Oh, yes, sir; I have seen some that would flow.

Q. Then the difference is not invariable. The lines are made just as thick from the color running on the biscuit as where it is printed on the gloss?

A. Yes, sir; but not as thin.

Q. But it may be just as thick?

A. Yes, sir; but not as thin

Q. Is it not a very nice test to state whether it is printed on the biscuit or on the glaze?

A. It takes a man who understands his business to tell.

Q. Well, you profess to understand the business, and you state as an expert that this sample is printed on the biscuit?

A. Yes, sir.

James Barlow, a witness produced in his own behalf, having been duly sworn according to law, deposeth and saith:

Direct examination (by Mr. Aitkin):

Q. I call your attention to the vitrified ware first, this morning. Did you ever submit a sample of that vitrified china to Mr. Magowan, or Mr. Alpaugh, or Mr. Donoher?

A. Never; I never had a sample; I never made a sample of it in my life.

Q. Did you ever make any representations to either of them about it?

A. No, sir; the thing was never spoken of between us at any time.

Q. When was the first time you heard it mentioned?

A. The first time I heard vitrified china mentioned was from Mr. Donoher; he came into my shop one day and asked me to bring a piece of a vitrified toilet set that I had at my house; he said that Mr. Magowan had spoken to him about it, and he said he would like to see a piece of it and see what it looked like; so I brought a piece; I think it was the soap-dish cover.

Q. Where did you get that from?

A. From my house.

Q. Where was it made?

A. At the East Trenton Pottery Company.

Q. Do you recollect when that was—about the time?

A. That was made in—[interrupted].

Q. I mean when he came and spoke to you about it.

A. I think that was before we commenced to make the under-glazed printed ware.

Q. When you started to make vitrified china, what did Mr. Wood and you agree about it?

A. We didn't want to make it.

Q. Why?

A. We both knew the difficulty that the Greenwood Pottery had experienced in trying to make vitrified china in connection with their ordinary goods; we knew that they had difficulty, and knew that they suffered great loss on that account, and that they finally dropped it.

Q. Did you report that to Mr. Magowan?

A. I did.

Q. What did he say about it?

A. He said we must make up a little clay and go ahead and make some of it the best we could.

Q. Well?

A. We went on and I think we made two presses of clay first, but I forget the exact quantity, and of course that would make a very small quantity.

Q. Did the men make any complaint about it?

A. Yes, sir; they complained about the refuse clay getting mixed.

Q. With what?

A. With the imperial china clay.

Q. Well, did you tell Mr. Magowan what they said?

A. Yes, sir; and he came up to the shop one day to see about it himself.

Q. Well?

A. I showed it to him and told him that the men were growling, and said they could not keep the scraps separate, and if there was trouble in the slip-house through the scraps getting mixed they must not blame them; I however told him at the time that to make that ware successfully it would necessitate separate workshops; and Mr. Magowan said at the time that they had workshops sufficient, and he could not build any more at that time.

Q. What did they decide upon about it?

A. We afterwards went down in his office, me and Mr. Wood, and saw them; Mr. Magowan and Mr. Alpaugh were both present; and he said that Mr. Wood had been speaking to him also about the scraps getting mixed; and I told him there was very great difficulty to contend with, and

advised them not to make it; he finally said, "Well, we will drop it for the present."

Q. And it was dropped?

A. Yes, sir.

Q. And that is the way it come to be dropped?

A. Yes, sir.

Q. Was anything lost by getting up the shapes and models for the vitrified china?

A. No, sir.

Q. Why not?

A. The shapes for the vitrified china were afterwards used for the imperial china hotel ware, which we made in quite large quantities all through the time we were there.

Q. Did you make any different saggers for the vitrified china ware?

A. No, sir.

Q. Did you make any setters for them?

A. I made a few setters; yes, sir; to place the plates on, at a very small expense; they were made of very common clay; I should estimate that it didn't cost over $25 for the setters.

Q. What was the whole expense of the experiment in vitrified ware; what would it cost?

A. Well, I would estimate it at less than $250, and I estimate it in this way: Where I am now working, and have been for the last six months, we have made two biscuit kilns a week on the average, and during that time we have made an average of thirty-four presses of clay a week; that goes to show that it takes seventeen presses of clay to make one biscuit kiln. Now, to make seventeen presses of clay into ware it would cost about $400; now, we made, to the best of my knowledge, about six presses of this vitrified clay, and we used, I believe, about four of them. Now, there was a considerable quantity of the clay left in the cellar not made up. That would be four presses of clay, which would make less than one-quarter of a kiln of ware. The price of that would be about $100; the cost of firing and putting in the ware-room a quarter of a kiln of ware would amount to about $30; probably one or two dollars over, but about that anyhow. The cost of making six presses of clay I estimated

at about $15 per press, which would made a total for the six presses of about $90. I estimate the total cost of the experiment in vitrified china to be about $220.

Q. Was the ware that wasn't finished completed in such a condition that it could be used?

A. It was good, sound ware, and if it was dipped with ordinary glaze and sold at an extra discount, it would more than pay them for the whole cost of the experiment.

Q. Did you ever guarantee to make the vitrified china a success?

A. Never.

Q. Were you ever consulted about it in the first place?

A. Never, sir; it wasn't necessary to consult me about those things, because I didn't do the mixing; Mr. Wood did that, and, therefore, I wasn't supposed to know anything about it.

Q. Now, I take you to the under-glazed printed ware. When did you first hear of that?

A. The first time was when I heard Mr. Donoher talking about it.

Q. After you had entered upon your management?

A. Yes, sir.

Q. Did you know anything about it at the time of making your contract?

A. No, sir.

Q. This was the first you heard of it?

A. Yes, sir; of the under-glazed.

Q. Was there any samples submitted to you?

A. Yes, sir; I recollect it.

Q. Did you ever submit a sample to anybody?

A. No, sir.

Q. Did you have any?

A. No, sir.

Q. Before you commenced the under-glazed, did you print on the glaze?

A. Yes, sir.

Q. For how long?

A. I could not tell you exactly, but I should judge we printed on the glaze almost a year.

Q. Do you recollect seeing a sample, and, if so, from where?

A. From Abram French and Company, Boston; it consisted of one toilet set, and Mr. Alpaugh wanted a model made and I modeled it.

Q. Were there any saggers made for those?

A. No, sir; it didn't necessitate the making of any other kind of saggers; we used the ordinary saggers that we used for all kinds of goods.

Q. Did you make some little pins that were referred to—what were called thimbles—for them?

A. Yes, sir; we used them.

Q. Were they in use generally at potteries?

A. We used thimbles in the printing kiln.

Q. Who got them up?

A. Mr. Leek; we afterwards used them in the large kilns to place the dishes on.

Q. Had they been in common use in England?

A. Yes, sir.

Q. And you used them after the under-glazed ware was stopped?

A. Yes, sir; in the large kilns.

Q. Up to the time you left?

A. Yes, sir; with great profit and success in the large kilns; it is the oldest method of placing ware in England, and it is the result of several years' experience, and they have never found anything to supersede them; they use them at the present time.

Q. It is said that copper plates were purchased and used for them; were they used subsequently?

A. Yes, sir; up to the time I left; it didn't necessitate any special kind of lithographing or under-glazed ware; the same kind of plates that we used for under-glazed we used for over-glazed and enameled printing.

Q. Was there any kiln built for the under-glazed printed ware?

A. The kiln was built before we started on the under-glazed ware.

Q. What was it built for?

A. It was built for the over-glazed printed ware.

Q. The firm changed from the over-glazed to the under-glazed?

A. Yes, sir; at Mr. Donoher's suggestion.

Q. To the best of your knowledge, how did the printed ware come out of the kilns as to colors, etc., as compared with the potteries in England?

A. Well, I have seen a great deal of printed ware in England; I worked at a pottery where they made scarcely anything but printed ware; I have seen lots of it, and, comparing that with what I saw in England, I think our ware came out favorably; there is always more or less running of the colors in printing, the world over, no matter where it is.

Did you hear Mr. Wood say anything to Mr. Alpaugh and Magowan about the mistake in the printed ware—in that under-glazed ware?

A. Mistake?

Q. Yes.

A. I have even heard Mr. Wood tell both Mr. Alpaugh and Mr. Magowan that it was a mistake not to allow him to use his own judgment in regard to making a suitable kind of body for it; he said they ought to allow him to use his own judgment as to what kind of a body he would make; and he said he would have made a commoner grade of body, the same as they make in England, but Alpaugh and Magowan both always objected, because they said it would sacrifice the color to the whiteness; they said that that was the only advantage they had over the English printed goods, and they must retain the color; that was the only advantage so far as the selling of the goods was concerned.

Q. Do you recollect an interview between Alpaugh and Wood respecting the printed ware and the manufacture of it?

A. Yes, sir.

Q. State what passed.

A. Well, there was several interviews.

Q. Yes.

A. One especially; I went in the office one morning on some business, and Mr. Alpaugh and Mr. Wood were present; Mr. Alpaugh asked Mr. Wood why he wasn't

sending the printed ware through in larger quantities; and Mr. Wood said that "the reason why is, as you know, as I have told you before, that I want to know more about it;" he said, "it is only an experiment, and I want to have more experience with it before I send it through in large quantities;" Mr. Alpaugh said, "William, we have had enough of that run through now to know as much about it as we ever will know; we have large orders for it and must fill them; if you still hesitate to send them through in quantities large enough to fill our orders, we shall be obliged to hire another man to do it;" and he pointed to a letter on the desk, and said, "here is an application from a man who professes to understand all about under-glazed work; now," said he, "if you don't send it through, we shall have to hire another person;" Mr. Wood at the same time said, "Well, you had better employ that man;" he said, "I would rather give up my position than be compelled to send ware through against my judgment;" Mr. Alpaugh said, "No, William, we don't mean that, we simply mean to employ a man to do the under-glazed work and you attend to your other duties."

Q. Do you recollect any other occasions than that?

A. I do.

Q. Upon the same subject?

A. Yes, sir; I recollect another occasion, very shortly afterwards.

Q. Well?

A. Mr. Alpaugh came in my shop; he had evidently passed through the kiln shed, and he brought over with him a four-inch hotel dish of the open pattern and showed it to me, and said, "Now, Mr. Wood is not sending this ware through in quantities to suit, and I don't know why he should hesitate;" he said, "we release him from all responsibility, both I and Mr. Magowan;" and he said, "I have every confidence in the ware; I have sent some down to my house and told the folks to put it on the table and use it every day, and we have done so, and we have tried every method we know of to craze the ware; we have put it in the oven and cooked on the ware; and he said, "we have boiled fat in it, we have made it hot and put it in cold water, and we have tried every method we know how to

craze it and it don't craze. Now," he said, "if he don't send it through so as to fill our orders we shall have to employ another man to do it." He said, "We cannot afford not to make that ware, we make so much profit on it;" and he said, "I have been figuring out the matter now," and, says he, "that shows in some cases as much as 200 per cent. profit." Mr. Alpaugh will recollect that.

Q. The firing of the kilns while you were there, what do you know in regard to the firing of the kilns, whether it was successful or not?

A. The firing of the kilns at the Empire Pottery, in my judgment, compared well with everything I have ever seen anywhere that I have ever worked at.

Q. How was the proportion of soft-fired ware?

A. Very little, indeed.

Q. Do you recollect some hard-fired biscuit ware?

A. I do not.

Q. Plates or setters?

A. Every pottery has setters.

Q. Did you have some of those lying around?

A. Yes, sir; when we left there was a large number of setters piled away for the men to place the plates on.

Q. Did you constantly use them?

A. Yes, sir.

Q. Do you know of any wares or goods being secreted about the pottery while you were there?

A. No, sir; unless it is what some of the witnesses seemed to have referred to—the finding of some under the benches.

Q. Well, what was that?

A. Well, that was what we call covers; they are imperfect ware, and we used them to cover the tops of the saggers; that is, we placed the dishes on pins, six or seven in a sagger, and that is covered with another sagger, and so it is continued up in the kilns; now, when we find a sagger that has a slight crack in the bottom, and is liable, owing to the action of the fire, to have bits drop out, we use these setters to preserve the ware; we put one on top, underneath the imperfect saggers, which saves the ware; every pottery uses them.

Q. Let me ask you a little about the bone china. Did you have a conversation with Magowan and Donoher about that? Did you ever submit them a sample of it?

A. No, sir.

Q. Did you have any?

A. No, sir.

Q. When was the first time you heard anything about that?

A. The first time I heard about that was when Mr. Donoher was speaking of it; he was speaking about Brewer's Belleek ware, and he said if we could get something up that we could sell in competition with that Belleek ware, he thought we could build up a nice little trade, and he thought bone china would be just the thing.

Q. Did you model any?

A. Yes, sir; I started, under Mr. Alpaugh's instructions, to make a tete-a-tete set.

Q. What did you model?

A. He said to me at one time, you go down to and get some nice shapes down there; I went down there and selected what I thought was the best shapes that he had in his store, and brought them up and submitted them to Mr. Alpaugh; he admired the shapes that I had, and said he thought I had used good judgment in my selection, and told me to model some of it; I afterwards modeled, if I remember right, four or five vases; that was all I modeled of what we call art goods, and the modeling of these pieces would cost in the neighborhood of $60 to $75 to model.

Q. Did you make those of bone china?

A. Yes, sir.

Q. With any success?

A. We commenced to make them, and they came out successfully, better than I anticipated very much, and we were encouraged.

Q. What did Mr. Magowan say about it?

A. He was highly pleased with the result when they came out of the glossed kiln, and he invited his friends there to come and inspect it; I heard Mr. Alpaugh state that he was giving it away in such quantities that he could not afford to make it.

Q. Who gave it away?

A. Mr. Magowan gave it away to his personal friends; Mr. Alpaugh said that those goods would have to be charged to Frank, because he could not afford to make the goods to give away, and he told Mr. Wood to have the room where they were kept locked, and to hold the key so that Frank could not get at them, and he did so; he showed me the key several times; I remember being in the office shortly after that when Mr. Magowan came in and wanted to know why that door was locked, and Mr. Alpaugh said the key had been lost, and that they could not get in there; afterwards I noticed the door was open, sometime after that, and the ware continued to go as much as usual, so much so that we could not keep any in stock.

Q. What did Mr. Alpaugh say?

A. He said we had better stop making it; that he could not afford to make them to give away.

Q. Were you making it still when you left?

A. Yes, sir.

Q. Who made it last?

A. Mr. Brunt; he made it during his leisure time.

Q. How about china teas to be sold?

A. We didn't make them for a considerable time after we started making china.

Q. Where did the sample of them come from?

A. Mr. Donoher submitted it.

Q. Were some of those in process of decoration when you left the factory?

A. Yes, sir; I remember being in the decorating shop the last day I was in the pottery, and I noticed on the benches that there was a large quantity, I should judge several hundred dozen cups and saucers of these teas and after dinners, and they were in process of decoration; that was the very last day we were there.

Q. Was there any bone china sets bought while you were there?

A. No, sir.

Q. Were you consulted about making bone china?

A. No, sir.

Q. Did you ever make any guarantee, or did Mr. Wood in your presence, to produce china teas in large quantities?

A. No, sir.

Q. Do you know whether the Empire Company are making the same ware now as they were when you left, and with the same designs?

A. I know positively of two they are making—the Windsor shape, which is the last shape I got up; and they are also making the Empress and the white Brunswick shape; the Empress, I believe, is a cheaper ware.

Q. Reference has been made to one of the designs you got up that Mr. Magowan claims was his design and not your model?

A. I claim it was my design.

Q. In what way?

A. The only suggestion that Mr. Magowan made in reference to that was that I should model a square shape.

Q. Then it was a mere suggestion?

A. Yes, sir; that was his suggestion, and I started in to make a square shape, and that shape was modeled before he ever saw it, and all the details of the thing were complete before he saw it, and he came into the shop a few days afterward, when the design was there for his inspection, and he was elated over the result, so that he had everybody that came into the pottery—any gentleman or lady that came into the pottery—come to see it, invited them in to look at it, he was so much pleased with it.

Q. Mr. Barlow, it has been said that every invoice of goods that was sent out was accompanied by guarantees that the goods should not craze; what do you know about the custom of potteries in that respect?

A. I know it is the general custom of all potteries to guarantee ware against crazing, and all that guarantee means is that if the ware does craze they will replace it—send other goods for them; it is the universal custom with potteries, I believe, both in England and America.

Q. Did you devote your whole time and best skill to the management of the Empire Pottery while there?

A. I did, sir.

Q. Did Mr. Wood do so?

A. I was there at all times, Sundays and nights.

Q. Did Mr. Wood do so also?

A. To the best of my knowledge, yes; I know that especially during the business season before Christmas, in the decoration department especially, we were very busy, and in order to get the orders off we had to work over-time; I know Mr. Wood has been in the pottery as late as ten o'clock for months at a time—ten o'clock at night.

Q. Do you know of his being careful about making his purchases and about the hiring of the men?

A. Yes, sir; he has talked about that with me; yes, sir.

Q. Do you know it from what you have seen?

A. I knew he was very careful in regard to hiring men; yes, sir; very careful.

Q. And about the buying of the supplies?

A. Yes, sir; I have knowledge of that also; I used to go around and inspect the supplies sometimes, and I know he bought good material.

Q. What did Mr. Alpaugh or Mr. Donoher say, in your hearing, about the reputation of the pottery?

A. I heard them both say that the goods made at our pottery had the best reputation in America; I heard that repeatedly.

Q. Did Mr. Alpaugh or Mr. Magowan complain to you of the work in any of the departments being improperly or negligently performed by you or Mr. Wood?

A. No, sir; he always talked to the contrary, and always seemed well pleased at the way we conducted the pottery.

Q Did they, or either of them, sometimes interfere with your management of the pottery?

A. Mr. Magowan did sometimes; I recollect especially in the beginning of 1884 the pottery was closed for about seven weeks, and there wasn't anything at all done; I know that the week previous to Mr. Magowan stopping us we talked to the men and told them to go to work on Monday morning, and he came there on Monday morning and told us to discontinue the manufacture and stop all hands, and we had to do it, and that was continued for about seven weeks; we didn't do anything at all.

Q. Was there any strike among the men at that time?

A. No, sir; not at that time.

Q. That had nothing to do with it?

A. No, sir.

Q. Did you hear Messrs. Alpaugh and Magowan speak of the way the decorating department was managed or run?

A. I heard Mr. Alpaugh express himself as being well satisfied with Mr. Wood's management of the decorating department.

Q. Did he say how successful it was?

A. Well, he always appeared satisfied, and always expressed himself so.

Q. Did you hear them say anything about Mr. Wood's mixing or make any complaint about it?

A. No, sir; never.

Q. Could you have made them any better?

A. I don't know as I could.

Q. Did they ever complain to you of the firing not being done to their satisfaction?

A. No, sir; they expressed themselves to the contrary.

Q. What was the condition of the shops when you left compared to what it had been when you went there?

A. The shops?

Q. Yes, the pottery; was there any confusion or disorder?

A. When we left the pottery they were in good running shape; there was no disorder or confusion about it.

Q. There was none?

A. No, sir.

Q. Mr. Magowan says that shortly after you took charge he tried to get clear of you and gave you notice to leave the pottery?

A. He didn't; no, sir.

Q. What did Alpaugh say to you in the fall of 1883, on starting on his wedding trip?

A. He came in the pottery yard and saw us together and told us he was going to get married, and he said he would be away several weeks, probably a month or two; and he said, "I go away feeling the fullest confidence that you will manage the pottery all right during my absence."

Q. Did you ever receive any notice to leave until you left in March, 1886?

A. No, sir.

Q. Were any complaints made to you in regard to the management of the pottery during the time you were there?

A. No, sir.

Q. Complaint has been made of ware that was improperly fired being returned, and that your attention was called to it in the office and you promised to remedy it; were you ever brought before the firm on complaints of that kind?

A. I never was in connection with any complaints of that kind.

Q. Reference has been made to the under-glazed ware being soft-fired and some of it returned. Do you know how much was returned and re-fired?

A. Not very much of it.

Q. If there had been much of it, would not you have known it?

A. If there had been, I would have known it, having the general oversight of things.

Q. Then there was no very great quantity?

A. No, sir; I have seen printed ware at times on the kiln-shed floor, waiting to be re-fired.

Q. Did you ever have a claim made upon you for damages for imperfect work or imperfect firing, or any other reason, from the Empire Pottery?

A. No, sir.

Q. Were you ever informed that you would be held responsible for the printed ware that was returned and re-fired?

A. No, sir; they never consulted me about the printed ware.

Q. When did you first hear of any claim made against you by Alpaugh & Magowan?

A. The first time that I heard of any claim was when the answer was read to me in this case.

Q. Did you ever hear Mr. Magowan say anything about the profits in the decorating department, and, if so, what?

A. Yes, sir; I heard him talk about it at one time when I was in the office with Mr. Wood; it was one afternoon; Mr. Wood drew my attention to a book where the decorating accounts were kept; as I understand it, it is kept in a

separate book—that is, the decorating department; Mr. Wood opened the book and showed it to me; the entry was under date of July, 1885; it was after our stock taking, and Mr. Wood showed me in the book where it had been balanced by showing a profit of over $30,000 gross profits; he drew Mr Magowan's attention to it right on the spot, and Mr. Magowan acknowledged it; Mr. Magowan remembers it, I have no doubt.

Q. Did you ever do anything towards getting a settlement of your profit account against the firm, and, if so, when first?

A. The first time was immediately after we went to the pottery.

Q. But I have reference to this paper now (showing witness a paper).

A. Yes, sir; the first time was after the first stock taking, that would be in July, 1884; we asked Mr. Magowan for the $2,000 guarantee that he had promised us; Mr. Magowan said that he hoped we would not press the matter, that they hadn't been very long in business, and he said "we have big claims to meet," and he hoped we would not press it just then, and we didn't press it; Mr. Wood and I didn't wish to put them to trouble; Mr. Wood asked Mr. Magowan if he would not give us credit on the books for $2,000, and also a statement showing it, and Mr. Magowan said yes, he would—this happened in the private office—then he called Mr. Mulford into the office and said to him, "You credit William and Jimmy with $2,000—give them credit for $2,000 and give them a statement of it," and he did so; Mr. Wood got a statement like mine, I believe.

Q. These are the statements that are produced here?

A. Yes, sir.

Q. *Exhibits 8* and *10?*

A. Yes, sir.

Q. Now, the next year, what did you do about that?

A. The next year, after the stock taking, we asked him again to pay us the $4,000 that was then due; Mr. Magowan made excuse at that time, and said he hoped we would not press it; he said at the end, when your time expires we will pay you the $6,000 that will then be due, either in cash or

some such way that would be entirely satisfactory to us, and we both at that time asked him to give us a statement and give us credit on the books, and he called Mr. Mulford, the same as he had at the first time, but Mr. Mulford wasn't in the office, he was away in the pottery somewheres, and Mr. Magowan said he would tell him to give us credit for it, and also to give us statements; we didn't get any statements for quite a while, because he failed to tell Mr. Mulford to do so.

Q. Did you subsequently get these papers?

A. Yes, sir.

Q. *Nos. 9* and *11?*

A. Yes, sir.

Q. That never has been paid to you?

A. No, sir.

Q. What effort did you make to get your pay from the guaranteed profits, subsequently after you were discharged; let me ask you first how you came to be discharged, what took place at that time, and what led up to it?

A. About two weeks previous to our discharge I had occasion to draw Mr. Alpaugh's attention to Mr. Mulford's interference with my duties around the kiln sheds; I discovered him interfering and disarranging my plans in respect to the kiln work; he done so that morning, and I complained to Mr. Alpaugh about it; he had gone to the kilnmen and countermanded an order that I had given in respect to the drawing of the kiln; he told them the kiln must not be drawn, and the men had to go home, because there was nothing else for them to do, and that was a day lost, and I felt rather angry about it, and I spoke to Mr. Alpaugh in reference to it; I asked him—Mr. Alpaugh—who had charge of the kilns, Mr. Mulford or I? he said, "Why, you, of course;" I said, "Then, why does Mr. Mulford interfere?" he said, "I don't know that he does;" then I related the circumstances to him about Mr. Mulford ordering the kiln not to be drawn, and I said, "Now, so long as you give me charge of the kilns, I won't permit Mr. Mulford or any other man to interfere with my duty;" and I said, "If that don't suit you, I am willing to quit, provided you will settle up with me;" and I said, "You may tell Mr. Magowan that;" I said, "I want you to dis-

tinctly undertand that I mean every word that I say, and you tell Mr. Magowan that;" about two hours afterwards Mr. Magowan sent for me to come into the office, and he spoke and said that Mr. Alpaugh had been talking about this trouble that I had in respect to Mr. Mulford's interference, and Mr. Magowan said that Mr. Alpaugh thought I was very angry about it, and he thought I was needlessly so; and he then said, "I suppose you had reference to Mr. Wood when you said no other man should interfere with your duties?" I said, "No. I didn't mean Mr. Wood;" I referred to Robert Gruesser, because he was the man that was around there that morning with Mr. Mulford and stopped the kiln from being drawn—interfering with the drawing of it; I said Mr. Wood never interfered with my duties in any way or shape, but that he attended to his and I attended to mine.

Q. Was anything said about whether you knew Mr. Wood's mixings then or not?

A. Yes, sir; then he said to me, "Do you know Mr. Wood's mixings?" I told him I knew a part of them, that I knew the mixings for the white ware, but I didn't know his mixings for the under-glazed ware; he said, "Well, that will be of no consequence, as probably Mr. Foskit knows them, as he is a printer;" I said, "I don't know anything about his knowledge." "Well," he said, "I and Alpaugh have been talking this matter over, and we have decided to make a change in the management;" he said, "We are of opinion that you and Mr. Wood don't get along well together; we think you differ in opinion in regard to the management of the pottery, and it is detrimental to the interests of the firm to have two managers that don't work in harmony together;" I told them that if there was ever two men in a pottery that worked more in unison for the interest of the pottery than we did I never knew of them. "Well," he said, "we differ in opinion about that, and we have decided to make a change and pay Wood off, but we would like to make an arrangement with you to take the entire charge of the pottery, with the assistance of a man for the decorating;" he said, "Such a man

shall be of your own selection, because in that case," he said, "if you choose the man, you can work better together."

Q. Did you then make an agreement for any length of time?

A. No, sir; he said he would like to make an arrangement with me to take charge of the pottery, and he would like me to sign an agreement with him for from three to five years at the same salary and with the same interests in the profits that I was then getting; he said, "in a little while, if everything goes on satisfactory, we will increase your salary to any reasonable extent you may ask;" I told Mr. Magowan it was my intention not to stay on there after the expiration of my present agreement.

Q. Did he press you?

A. He pressed me very much and very earnestly to sign an agreement, and I told him no.

Q. Did he give you any reason for wishing you would continue?

A. Yes; he said he would like to make an arrangement with me to manage the pottery, "because," he said, "you can continue to use the same mixings that Mr. Wood has used, as we are perfectly satisfied with them and don't want to make a change."

Q. What was the result?

A. I told Mr. Magowan that I had signed the last agreement that I had ever intended to sign to serve any man, and it was useless for him to press it; he then suggested that we should enter into a verbal agreement for one year, and I declined to do that.

Q. Did Mr. Alpaugh say anything about that?

A. Yes, sir; Mr. Alpaugh right then said, "Why, yes, if James Barlow will promise to stay with us for one year, I have such explicit confidence in his word that I can rely upon him that he will stay if he says he will stay."

Q. Well?

A. I had previously to that told them that I would not sign any agreement, nor make any agreement whatever with them, but I would promise to stay on until they could get a man to suit them. Mr. Magowan said they wanted to make some arrangement that they could rely on, as it wasn't for

the interests of the firm to be so often changing their management. After that he suggested about the verbal agreement; Mr. Alpaugh remarked that he had every confidence in me, and would be satisfied if I gave my word—that he would take it. I told him that I would not enter into any agreement for any specific time, but I repeated my promise to stay with them until they could get a man to suit them; and I said "even that promise—even the keeping of that promise depends upon the satisfactory settlement of our present agreement" Mr. Magowan said, "Why, of course we intend to keep the agreement; as business men we cannot afford to do otherwise."

Q. What did they have reference to?

A. To keeping the agreement for the guarantee.

Q. The guaranteed profits?

A. Yes, sir; the $2,000 a year. He said that we would talk it over to-morrow, and says he, "You come in to-morrow morning and we will talk it over again." I went in there the next morning, and Mr. Alpaugh and Mr. Magowan were both present. I told Mr. Magowan that I had thought the matter over, and the only condition I would consent to stay on after our agreement had expired was, that he should pay me all the money that was due me up to date according to contract, with interest added. When I told him that, Mr. Magowan said to me, "Jim, you ought to be satisfied to get the principal, let alone the interest;" and he was very angry and walked out of the office. That was the last personal interview I had, I think, until he sent for me to come to the office, about two weeks afterwards; I think it was on a Saturday, and he told me that he didn't require my services any longer.

Q. That is the way you were discharged?

A. Yes, sir.

Q. During all these conversations, was any complaint made to you about your management or about your work?

A. No, sir.

Q. Or about the management of the pottery?

A. No, sir; Mr. Magowan said, "We would like to make an arrangement with you; you are the man we want; you are the man we have always wanted." He said, "We have

the choice of two other men, but," said he, "we prefer you because you can go on and do the mixings as they have been done, and we don't want any change."

Q. Was any complaint made in regard to Mr. Wood's management?

A. No, sir; not in my presence.

Q. Well, you reported from day to day until you were told to keep away?

A. Yes, sir.

Q. Did you do anything to endeavor to get a settlement of your guaranteed profits?

A. Yes, sir; I did immediately after we were discharged.

Q. What did you do?

A. We went out to the rubber works very frequently and tried to get a settlement; he always acknowledged that he ought to pay the money; we went out to the rubber works and tried to get a settlement; he told us that he didn't want to settle with us until the expiration of our agreement, and that was on the 7th of July, I believe, but in order to induce an earlier settlement we made a written proposition to him, and that proposition was that we would take notes at thirty days intervals; Mr. Wood's proposition was, if I remember right, that he should receive three notes at thirty days intervals of $2,000 each. My proposition, I believe, was that I should receive six notes of $1,000 each at thirty days intervals, to come due after Mr. Wood's notes had been paid off. We took that proposition up in writing to the rubber works one day, and Mr. Magowan read it over and said it was perfectly satisfactory to him; I said that was our last resort; he said if his counsel was satisfied to have the settlement made on those terms he was; he then appointed an interview in his counsel's office, but failed to keep it. We went frequently when he appointed interviews to meet him, but he failed to keep them.

Q. All your efforts to obtain settlements were failures?

A. Yes, sir.

Q Did you go to him after the expiration of the term mentioned in the agreement?

A. I didn't personally, but Mr. Wood told me he had seen him.

Q. You don't know anything about book accounts?

A. No, sir.

Q. Were you present at the taking of the stock?

A. I simply took the accounting of the ware in the bins along with several others.

Q. But you don't know how the profit account was made up?

A. No, sir; that was entirely in their own hands.

Q. (Showing *Exhibit 14* to witness)—This plate, *Exhibit 14*, which I now show to you, can you tell whether that is printed under the glaze or over the glaze?

A. Well, I know positively this is printed under the glaze; we never print on the glaze of this pattern; and from the amount of glaze there is on that plate I should say that was under-glazed printing; there is not sufficient glaze on that plate to allow the color to sink on the surface; and with that amount of glaze—if the printing had been put on that amount of glaze it could not have possibly have sunk through the glaze without discoloring where the color is thick like that; the glaze being so thin it would have that appearance.

Q. Do you know of this plate and these others having been used in Mr Wood's house?

A. I have dined off them many and many a time for two and three years; I remember his getting those plates; he first brought them to me in the shop and showed them to me, and said he was going to take them home and see how they stood, and I know he has had them in constant use since.

Cross-examined (by Mr. Vroom):

Q. Do you profess to be a practical potter?

A. Yes, sir.

Q. Do you understand all the branches of a pottery?

A. No, sir.

Q. What particular part of it were you brought up in?

A. Do you mean my trade?

Q. Yes.

A. Modeling.

Q. Where did you learn that trade?

A. With Demick & Co., in England.

Q. In England?
A. Yes, sir.
Q. What age were you when you left England?
A. About 29 years.
Q. How old do you say you are now?
A. Forty-six.
Q. How long were you engaged with Demick & Company?
A. About 17 years; I commenced with them when I was 12½ years of age.
Q. And you were engaged exclusively in the modeling department of the pottery?
A. Not exclusively.
Q. What else did you do?
A. I used to do the ornamental model making.
Q. Is not that connected closely with it?
A. Yes, sir.
Q. And designing?
A. Yes, sir.
Q. Is not that one branch of the pottery business?
A. Yes, sir.
Q. When you came to this country, where did you first go to work?
A. With the Greenwood Pottery Company.
Q. You stayed there how long?
A. About two years.
Q. From there where did you go?
A. To the Mercer Pottery.
Q. Now, while you were there, were you employed at this particular branch of the trade, modeling?
A. Yes, sir.
Q. Any other branch?
A. I was foreman over the workshops.
Q. That includes the supervision of all the work that was done?
A. All the manufacturing.
Q. Are you then learned or skilled in the manufacturing part of a pottery?
A. Yes, sir.
Q. You profess to be?

A. Yes, sir.

Q. Have you worked at the other branches, except modeling?

A. No, sir.

Q. Then your experience only arises from seeing the work done?

A. It is my practical experience from seeing it done.

Q. But not from practical work of your own?

A. No, sir; but when I was in England, I worked on my own account making ware; I have made hundreds of dozens of articles.

Q. But you had never been in business for yourself, or been employed at such practical work?

A. Not to make ware; no, sir.

Q. In reference to the mixing of the bodies of clays—have you practical knowledge of that?

A. Yes, sir.

Q. From practical experience?

A. Yes, sir; from mixing them.

Q. Where did you learn that?

A. The first mixing I did was for Mr. Moses.

Q. You didn't learn that in England?

A. I have made experimental trials there.

Q. But that was the first time that you did that practically in this country?

A. Yes, sir.

Q. For Mr. James Moses?

A. Yes, sir.

Q. When did you first see Mr. Magowan?

A. I saw him first in Mr. Sterling's house, one Sunday morning.

Q. Did you at that time, Mr. Barlow, state what your knowledge was of the pottery business?

A. No, sir; I wasn't asked.

Q. Didn't you refer to it?

A. No, sir.

Q. You didn't refer to the fact at all, even that you were a potter?

A. No, sir; Mr. Magowan said he had been making

inquiries, and found out that I was working at the Mercer Pottery.

Q. Yes; but you knew he wasn't a practical potter?

A. I didn't know anything about him.

Q. Hadn't you heard of him before that time?

A. Yes, sir.

Q. But you say you never knew anything about him?

A. I never saw him, to my knowledge.

Q. But you knew he wasn't a potter?

A. I didn't know anything about him.

Q. You had no conversation at all with him on the subject of potteries?

A. No, sir.

Q. Not the slightest?

A. No, sir.

Q. And you state that, without any conversation of that kind being had, he wanted to employ you?

A. Yes, sir; I do.

Q How long after that conversation was it he saw you again?

A. Our first conversation was on that Sunday morning.

Q. But how long after that was it he saw you?

A. On Monday.

Q. Did you have any conversation at that time with reference to it?

A. No, sir.

Q. On the subject of what you could or would do at the pottery?

A. No, sir; I promised him on Sunday, at his request, to ask Mr. Moses to release me, and he came to find out what I had done with reference to that matter.

Q. Is that all that took place at the second interview?

A. Yes, sir.

Q. Then, it was in connection with his trying to induce you to get away from Mr. Moses. Now, when did you next meet him?

A. The next day.

Q. Tuesday?

A. Yes, sir.

Q. Was anything said then about the running of a pottery?

A. No, sir.

Q. Or about your ability to run it?

A. No, sir.

Q. Or what you could do or would do?

A. No, sir.

Q. What was said?

A. He simply came to find out if I had got my release, and if not, to impress upon me or persuade me to use my best endeavors to get away and come with them.

Q. Very well; now when did you next meet him?

A. The next day, at my house; he came every noon.

Q. Every noon?

A. Yes, sir; for one week.

Q. And were your conversations all of the character that you have mentioned?

A. Yes, sir; the conversation was of that character; it was simply to find out if I would come down there. On the second interview, I believe it was—he had previously offered me $30 a week—on the second interview he offered me $60 a week and ten per cent. of the net profits.

Q. For what?

A. To come there as manager and to change the ware.

Q. General manager?

A. Yes, sir.

Q. But you didn't discuss as to what would be done?

A. He told me he wanted me to make the ware the same as I made it for James Moses.

Q. Did you say you could do that?

A. I didn't say anything of the kind.

Q. Did you say you would do it?

A. He supposed I would.

Q. I don't ask you what he supposed, I ask you what you said. Did you say you could do it; that you could make the same ware as they did at James Moses'?

A. Certainly I could.

Q. Well, did you tell him so?

A. I don't know as I did.

Q. Did you say that you would if you came there with them?

A. Certainly, if I came there I would.

Q. Did you say that?

A. I don't remember it.

Q. Well, was there any other conversation?

A. It was understood that I should make the same ware that I was making at Mr. Moses'.

Q. It was understood that you should make the same ware?

A. Yes, sir; that is what he said; that he would like me me to make the same kind of ware that I was making for Mr. Moses.

Q. Didn't you, at one of those interviews, when the first offer was made of $30 a week and ten per cent. of the profits, say that that would not be sufficient compensation for you to go?

A. No, sir.

Q. Didn't you say to him you would want a larger salary than that; $60 a week and ten per cent. of the profits?

A. No, sir.

Q. Then the proposition was entirely his, with reference to the compensation you were to get?

A. Yes, sir.

Q. Was any proposition made by you at all, then, to Mr. Magowan, up to the time when you saw William Wood?

A. None whatever.

Q. Did you ever demand of Mr. Magowan that he should guarantee to you any sum in the event of your going there?

A. No, sir.

Q. Did you ever intimate to him in any way that he was to guarantee you $2,000 a year, or any other sum, in the way of profits?

A. No, sir.

Q. Did you ever hear of that until it was mentioned to you by William Wood?

A. No, sir.

Q. Did Mr. Magowan make any such proposition to you from the time he first saw you until the time you saw Mr. Wood?

A. No, sir.

Q. He didn't?

A. No, sir.

Q. Now, give me the date when you first saw Mr. William Wood in reference to this matter?

A. Well, I wouldn't be positive, but it was shortly after Mr. Magowan ceased coming to me.

Q. Shortly after Mr. Magowan ceased to come to see you?

A. Yes, sir; I believe it was the next day; I think it would be Saturday, if I am not mistaken; Mr. Magowan came to see me for a whole week, with the exception of Friday; on Friday he sent Mr. Sterling to find out if I had changed my mind, and I believe it was the day following that that Mr. Wood came to see me; I am not certainly positive about it; I believe it was the following day.

Q. How many times did you see Mr. Magowan in the presence of Mr. Wood?

A. Once.

Q. Was that the day after?

A. No, sir; that was on Sunday afternoon; I think that would be the week afterwards.

Q. That was the week after you first saw Mr. Wood?

A. Yes, sir.

Q. You think that period of time had elapsed?

A. Yes, sir.

Q. Had you seen Mr. Magowan at all in the interval between the time Wood told you what he would do and the interview in the house on the Sunday afternoon?

A. No, sir.

Q. Not at all?

A. No, sir.

Q. Then, you went up to Wood's house on Sunday afternoon?

A. Yes, sir.

Q. And you there met Mr. Magowan?

A. Yes, sir.

Q. He was there when you got there?

A. No, sir; I got there first.

Q. You and Wood are brothers-in-law?

A. Yes, sir.

Q. Did you see him during that week and talk to him with reference to that matter?

A. Only what he came to my house and told me.

Q. That was the only conversation you had with reference to this matter?

A. Yes, sir; I think he came twice.

Q. How long a conversation did you have with him?

A. Only a few minutes.

Q. Was anything said about the management of the pottery or as to what you could do?

A. Nothing whatever.

A. There was nothing said about that until you came together at Wood's house on that Sunday afternoon?

A. There was nothing said then.

Q. Now, tell us what was said at that time.

A. He simply said that he would like me to come along with Mr. Wood; he said that since he had seen me he had come to the conclusion that they would need two managers; he said, "our pottery is so large, and we intend to do a large business;" he said Mr. Alpaugh was the best salesman there was in this country, and he had no doubt he would sell all the goods we could make, "in fact," he said, "I believe he could sell as many goods as two potteries could manufacture"—[Interrupted.]

Q. Mr. Barlow, did—[Interrupted.]

By Mr. Aitkin—One moment; let the witness answer, if you please.

By Mr. Vroom—I thought he had finished.

Q. Proceed.

A. He said he had no doubt they would sell a large quantity of goods; and he said, "I haven't the least doubt but what we will make from $50,000 to $60,000 a year," and he went on and told me if I would come with them; he said, "we shall need two managers;" and as my time would be taken up very much with modeling, almost exclusively, that they would need two managers; he said if I would come with them he would give me $60 per week salary, and $2,000 per year guarantee of the profits.

Q. Who said that?

A. Mr. Wood had told me that previous to then, and Mr. Magowan went over the whole ground again.

Q. You say that Mr. Wood told you that; you had never heard it from Mr. Magowan prior to his meeting you there that Sunday?

A. No, sir.

Q. Don't you know that the proposition of guarantee or salary wasn't mentioned at that Sunday interview?

A. I know it was.

Q. Don't you know that on that Sunday afternoon the proposition as to how much should be paid in the way of profits was upon your suggestiou and upon Mr. Wood's, and not upon Mr. Magowan's?

A. It was a suggestion on Mr. Magowan's part.

Q. You were practical potters, and, after hearing his statements, did not you state to him what could be done at that pottery?

A. No, sir; Mr. Magowan made all the representations in regard to it.

Q. Didn't he at that time state what they proposed to do, in the way of making ware, the kind of ware, &c.?

A. No, sir.

Q. And didn't you at that time, in connection with Mr. Wood, undertake to guarantee the successful manufacture of American porcelain by that company?

A. No, sir.

Q. Didn't you represent that you were able to make certain things, such as vitrified china, bone china, &c.?

A. No, sir; no such thing was mentioned.

Q. Didn't you then discuss the subject of under-glazed decorated ware?

A. Positively not.

Q. Then you want us to understand, Mr. Barlow, that during this conversation on Sunday afternoon there was nothing said at all relating to the ware or your capacity for making it?

A. No, sir.

Q. Then, after that, Mr. Magowan simply offered you this salary you mentioned, and guarantee $2,000 a year profit?

A. Yes, sir.

Q. And agreed you should have a contract drawn to that effect?

A. Yes, sir.

Q. That was all that took place then?

A. Yes, sir.

Q. Then you met next at the Trenton Rubber Works?

A. Yes, sir.

Q. And you had the contract ready?

A. Yes, sir.

Q. You read that contract?

A. Mr. Magowan read it first.

Q. Did he read it aloud?

A. He read it to himself.

Q. Wasn't it read out aloud?

A. I don't remember; Mr. Magowan read it twice.

Q. Could it have been read out aloud without your knowledge?

A. I should say not.

Q. Will you say it wasn't read out aloud?

A. I don't remember that it was.

Q. Didn't Mr. Alpaugh, upon reading that contract, or hearing it read, object at once to that clause containing a guarantee of $2,000 a year?

A. Certainly not.

Q. Didn't he object to it until you and Mr. Wood made a statement of the amount of profits that you would make there?

A. No, sir; there was no statement in regard to the amount of profits that would be made.

Q. You made no statement in that interview with reference to the profits you could make from a plant of that kind?

A. That is what I mean to say.

Q. Do you also mean to say that Mr. Alpaugh, who was then a stranger to you both, didn't say a single word to you in reference to the manufacture of the goods there?

A. No, sir; I don't remember that he did.

Q Mr. Alpaugh has said that you then stated to him the kind of goods you expected to make, and upon what you

based your statement as to the amount of profits you expected to make; is that true, or not?

A. I don't remember anything of the kind.

Q. Do you know whether it was said or not?

A. I don't remember it.

Q. Do you mean to say that Mr. Alpaugh signed that agreement without any question on his part as to your capacity, or Mr. Wood's capacity, to take charge of this pottery?

A. I do.

Q. He had never seen Mr. Wood before?

A. I don't know that he had.

Q. Wasn't he introduced to Mr. Wood when he came there?

A. I think he was, by Mr. Magowan.

Q. You were there when it was done, were you not?

A. Yes, sir.

Q. Of course he was a stranger?

A. I should presume so.

Q. Do you want us to believe that he did execute that agreement without any conversation whatever in reference to your capacity, or Wood's capacity, to manufacture the goods?

A. Yes, sir.

Q. Do you say that no reference was made to that at all?

A. Not to my knowledge.

Q. You would remember it, wouldn't you, if it had been said?

A. I should, I think.

Q. Now, Mr. Barlow, how did you fix upon the work you were to do and the work Mr. Wood was to do?

A. That was fixed on Sunday afternoon; at the Sunday afternoon interview.

Q. Did you then state what part you could do?

A. No, sir; but it was arranged.

Q. Arranged how?

A. Mr Magowan arranged it.

Q. Without knowing what you could do?

A. Mr. Magowan did know what I could do, from representations that had been made to him.

Q. Never mind about that; speak of your own knowledge. I want to know from you whether Mr. Magowan arranged the work that you should do and that Mr. Wood should do without saying anything to you on the subject except to make that simple announcement?

A. It was arranged between us three.

Q. Then you did talk about what you could do?

A. No, sir; we didn't.

Q. Supposing he had assigned you to do the mixing and decorating, what would you have done?

A. We agreed amongst ourselves that Mr. Wood should do the mixing.

Q. Did he say that he could do it?

A. No, sir; but Mr. Magowan knew he could.

Q. How do you know he did?

A. Because he knew that he had done that for the East Trenton Pottery.

Q. How do you know he knew that?

A. I presume he did.

Q. Now, Mr. Barlow, I asked you this for the purpose of showing how ridiculous it is for you to make such statements; you could not know it. Now, we don't want any presumptions at all, but you will please give us the plain facts. Now, you mean to state that, without any statement made upon your part as to what you could do, or any statement upon the part of Mr. Wood as to what he could do, your duties were assigned to each of you that day?

A. We agreed that Mr. Wood should do the mixing and take charge of the kilns and take the general superintendency of the pottery, and I should take charge of the workshop and do the modeling, and also to take charge of the decorating shop. It was Mr. Magowan's own proposition that I should take charge of the decorating shop.

Q. Didn't Mr. Wood state that he would make an article of American porcelain?

A. No, sir.

Q. Wasn't the fact talked over at that time of discontinuing the manufacture of the white granite and C. C. ware?

A. No, sir.

Q. That never was?

A. No, sir; not until a year afterwards.

Q. When was the first conversation had with reference to the manufacture of imperial china?

A. That was commenced at the time Mr. Magowan engaged us.

Q. Well, now, that is what I want to get at. Just state about that.

A. Mr. Magowan told me that he wanted me to make the same kind of ware that Mr. Moses made.

Q. Did you do it?

A. Yes, sir.

Q. What body was used in mixing?

A. Mr. Wood and I consulted together about that.

Q. Was the imperial china made from the same body that Mr. Moses used?

A. Yes, sir; as near as possible.

Q. Did you state that to Alpaugh and Magowan?

A. No, sir.

Q. Have you ever stated it to them both?

A. No, sir.

Q. You never have?

A. No, sir.

Q. How did you come to adopt that body?

A. We thought it was good.

Q. When did you conclude to adopt it?

A. After we got word to make it.

Q. You exercised your own judgment in adopting it?

A. Yes, sir.

Q. You didn't consult them as to the advisibility of that?

A. No, sir.

Q. And you didn't with reference to any kind of bodies you have used there since?

A. No, sir.

Q. The control of the bodies and clays was with you and Mr. Wood under the agreement?

A. Partly with me and partly with Wood.

Q. Then the adoption of that, as a standard grade of ware, was because you and Mr. Wood saw fit to adopt that for the use of the pottery?

A. Yes, sir.

Recess.

Q. Are you sure that you didn't say to Mr. Magowan that you would not enter into their services unless Mr. Wood was also employed?

A. Positively sure.

Q. If you preferred to go there alone, why didn't you so state to Mr. Magowan?

A. I had no particular objection to Mr. Wood.

Q. Did you state that you would prefer to go with them alone?

A. No, sir.

Q. Did you at any time before the contract was signed?

A. No, sir.

Q. You did not?

A. No, sir.

Q. You never in any way intimated, up to the time of the execution of the contract that you would prefer to be the sole manager of the pottery?

A. No, sir.

Q. Did you ever conclude to go there at all until after you had the interview with Mr. Wood?

A. Yes, sir.

Q. Wasn't it a fact that you wouldn't enter the employ of Alpaugh & Magowan without Mr. Wood, and that Mr. Wood would not contract to go with them without you?

A. No, sir; no such thing was ever spoken of.

Q. Do I understand you to say that no complaints were made at all as to the imperial china that was first made?

A. No complaints.

Q. You never heard any complaints?

A. No complaints, but praise.

Q. No complaints of crazing?

A. No, sir.

By Mr. Aitkin—He said no complaints, but praise; I think you misunderstood him.

Q. Didn't Mr. Magowan and Mr. Alpaugh both speak to you and Mr. Wood of the large amount of crazing in the imperial china?

A. No, sir.

Q. Who made the mixing for the manufacture of the vitrified china?

A. Mr. Wood.

Q. Did you have anything to do with it?

A. No, sir.

Q. Did you have any conversation with him in reference to it?

A. Not at all.

Q. Did you have a conference with the firm in reference to the vitrified china before it was made?

A. No, sir; only in a general way.

Q. Before it was made?

A. It was after Mr. Donoher said he would like to have it.

Q. Mr. Donoher wasn't a member of the firm at that time, was he?

A. I don't know.

Q. Are you sure whether he was or not?

A. I don't know whether he was or not.

Q. Didn't you state that you and Mr. Wood were able to produce vitrified china?

A. No, sir.

Q. Didn't you state that you were able to produce it in paying quantities?

A. No, sir.

Q. Wasn't the reason that the manufacture of vitrified china had to be abandoned the fact that it could not be produced so as to put it on the market?

A. The reason why it was abandoned was because, as I stated in my direct evidence, we got into trouble in the workmanship.

Q. You don't answer my question. Wasn't the reason it was abandoned because it could not be produced in paying quantities?

A. I don't know as it was.

Q. Didn't Mr. Magowan so state to you?

A. State what?

Q. That it could not be produced—that you could not produce it in paying quantities so as to put it upon the market?

A. He did not.

Q. Did you have anything to do with the making of the body or the gloss of the under-glazed printed ware?

A. The body of the printed ware was exactly the same as the white imperial china; the glaze I don't know anything about.

Q. You don't know anything about it?

A. No, sir.

Q. Were you consulted in reference to the manufacture of it?

A. No, sir.

Q. And made no representations as to the fact that you could make it?

A. No, sir.

Q. Did you have anything to do with the making of the under-glazed printed ware?

A. No, sir.

Q. You spoke about the use of thimbles; were they in use there at the time you left?

A. Yes, sir.

Q. They use them yet in the pottery where you are employed?

A. No, sir.

Q. Do you know of any other place where they are used?

A. I do not.

Q. You don't know of any other place in this country where they are used?

A. I do not.

Q. Where did you hear Mr. Wood tell Alpaugh and Magowan that it was a mistake not to allow him to use his own judgment about the body of this ware?

A. Frequently, in the office and in my shop.

Q. What body was he using?

A. Do you mean for the printed ware?

Q. Yes.

A. The imperial china body.

Q. Whose mixing was it?

A. Mr. Wood's.

Q. Who had charge of that branch of the manufacture?

A. Mr. Wood.

Q. Yes, he had charge of it?

A. Yes, sir.

Q. Hadn't he the power, under the general terms of the

agreement, to make any mixing that he saw fit for that ware.

A. For the white ware?

Q. For any ware?

A. I don't know; but the objection he was making to Messrs. Alpaugh and Magowan was on account that they would not allow him to make any other body on account of the color; he said—[Interrupted].

Q. One minute. Do you mean to tell me that the only body that can be made—white body—was the body that was used for imperial china?

A. I don't understand you.

Q. Do you mean to say that the only white body that could have been used for the purpose of transfer printing, was the body he used for imperial china?

A. I mean to say this—[Interrupted].

Q. Please answer my question?

A. Ask me it again.

Q. [Question repeated].

A. Yes, sir.

Q. Is not the same body used by other manufacturers for under-glazed printing?

A. I don't know what they use.

Q. But they do have under-glazed printed ware upon white bodies, don't they?

A. I believe so.

Q. Don't you know it?

A. I don't know it positively; I know they have over-glazed ware, but I don't know about the under-glazed.

Q. Do you know anything at all about under-glazed printing, as far as the bodies are concerned?

A. No, sir.

Q. You cannot give us any information on that?

A. I have had no experience at all on that.

Q. When did you first make any of the bone china?

A. Well, I don't know the date.

Q. Had you made it before you went with Alpaugh & Magowan?

A. No, sir.

Q. You had never made any before?

A. No, sir.

Q. Then was it an experiment, as far as you were concerned?

A. Yes, sir.

Q. Hadn't you stated to them that you could make it?

A. No, sir.

Q. Hadn't you had conversations with them in reference to that before you undertook the making of it?

A. No, sir.

Q. How, then, did you come to make it?

A. Through Mr. Donoher wanting it.

Q. Was he a member of the firm?

A. I don't know, but he was connected with the firm in some capacity; as salesman, I suppose.

Q. Now, Mr. Barlow, do you want us to understand that that was undertaken by you and Mr. Wood purely as an experiment?

A. Yes, sir.

Q. As far as you were concerned, you had had no experience in the making of it at all?

A. No, sir.

Q. Have you ever made any since?

A. No, sir.

Q. Do you know of any complaints being made of imperfect ware by the firm to you?

A. What kind of ware?

Q. Imperfect in the firing?

A. No, sir.

Q. No complaints of soft firing?

A. No, sir.

Q. Or of hard firing?

A. No, sir.

Q. Not during your whole time there?

A. No, sir; they always expressed themselves as satisfied with the firing.

Q. When was it that Mr. Magowan expressed to you that there was a showing of $30,000 of gross profits?

A. I believe it was after July stock taking, in 1885.

Q. Did you see the book?

. I did.

Q. Did you examine it?

A. I saw the figures in it.

Q. What book was it?

A. One that they kept the decorating account in; it was a separate book.

Q. Did you examine the journal?

A. No, sir.

Q. Have you never seen it?

A. No, sir; I don't know anything about the books.

Q. Don't you know that you were asked by Mr. Magowan to examine the journal?

A. No, sir.

Q. Don't you know that when you came and talked with him about getting the $2,000 guarantee profits that he told you that instead of making profits they had sustained loss?

A. I don't remember his saying it.

Q. And didn't he then refer to the journal?

A. No, sir.

Q. And show you the loss?

A. No, sir; he never showed me the book.

Q. Didn't he tell you where the book was?

A. No, sir.

Q. Didn't he tell Mr. Mulford to show you the book?

A. No, sir.

Q. Were any of the books ever denied to you, was access of them denied to you?

A. No, sir.

Q. Did you ever ask to see the books?

A. No, sir; I don't understand books.

Q. Well, but you can understand figures when you see them?

A. Yes, sir.

Q. And you could have understood whether there had been a loss or a profit made?

A. Yes, if it had been explained to me.

Q. Well, the journal as shown here the other day at the last hearing showed, at the very time you speak of, a loss of over $20,000; do you mean to say that you didn't see that?

A. I mean to say that I didn't.

Q. Did you see that entry made that you speak of?

A. Yes, sir; I saw the figures.

Q. Did you see them make it?

A. No, sir; but I saw the figures after it was made.

Q. Didn't it say $2,000 towards profits?

A. I never saw the books; I am speaking now entirely of the decorated book.

Q. But you saw the journal there every day, didn't you?

A. I never saw the inside of those books to my knowledge.

Q. You don't know whether that entry followed immediately after a statement of an actual loss to the firm up to that date?

A. I don't know anything about it.

Q. Didn't Mr. Magowan then say to you that no profits at all had been made, and for that reason no profits of any kind were coming to you, or words to that effect?

A. He did not.

Q. Don't you know that Mr. Magowan then distinctly stated to you that he would not give or credit you with $2,000 when profits hadn't been made?

A. No, sir; he always acknowledged he would pay us.

Q. When did you have the conversation with Mr. Magowan as to your knowledge of Wood's mixings?

A. About two weeks previous to our leaving.

Q. You say that Mr. Wood had a separate mixing for the white ware from what he had for the under-glazed?

A. No, sir.

Q. Didn't you so state in your examination this morning?

A. I said I knew the mixing for the white ware, but not for the printed ware.

Q. Haven't you just stated that the white ware was the same as the printed ware?

A. As far as the body was concerned.

Q. That is the case, is it?

A. Yes, sir.

Q. And the only difference is in some other respects?

A. I don't know as there is any other difference.

Q. Is there any difference in the gloss?

A. Not to my knowledge; I don't know.

Q. Have you ever stated to anybody that Mr. Magowan

sent parties to inspect the bone china, and that he gave it away to his friends?

A. No, sir.

Q. How do you know that they took any of that ware?

A. Mr. Alpaugh told me.

Q. Do you know of any quantity of bone china being taken away?

A. No, sir.

Q. Was it produced in sufficient quantities to take away?

A. Yes, sir.

Q. There wasn't very much of it, was there?

A. Mr. Wood had one man working upon it.

Q. Was that the man spoken of here to-day by the witnesses?

A. Yes, sir.

Q. Do you mean to say that you never were consulted by the firm with reference to the manufacture of the printed ware?

A. No, sir.

At this point three articles of ware were offered in evidence, and were marked *Exhibits C 14, C 15* and *C 16.*

Q. (Showing one of above exhibits to witness)—Is that over-glazed or under-glazed printing?

A. Under-glazed.

Q. (Showing another to witness)—Is that also underglazed?

A. Yes, sir.

Q. They are both printed upon the biscuit?

A. Yes, sir.

Q. (Showing another to witness)—That is also, is it not?

A. Yes, sir.

Q. That is all.

Re-direct.

Q. Do you recognize that as made at your shop?

A. Yes, sir.

Q. Do you know how long ago that was made?

A. That was made about the time when we first started to make it.

Q. That is all.

Complainants rest.

Spencer M. Alpaugh, a witness heretofore sworn in his own behalf, is re-called for further direct examination.

By Mr. Vroom:

Q. Did you, in connection with the pottery, ever have charge or control of the glossed ware-rooms during the time Mr. Barlow was employed there?

A. No, sir; never.

Q. Who had the superintendency of the glossed ware-rooms and the entire pottery?

A. Mr. Wood.

Q. Were you at home all the time?

A. No, sir; I was away more than half of the time.

Q. Would it have been practical for you to have taken charge of the ware-room?

A. No, sir.

Q. Did you ever, at any time, assume control of it?

A. No, sir; never.

Q. Mr. Wood has stated that, with reference to the making of the under-glazed ware, which is transfer printing on the biscuit, that you objected to the changing of the body from the imperial china body; is that true?

A. No, sir; I knew nothing about it at all.

Q. Did you ever interfere at all with it?

A. No, sir.

Q. With the body or the glazes?

A. No, sir.

Q. Had you knowledge to enable you to do so?

A. No, sir.

Q. Do you practically know anything about it at all?

A. No, sir; nothing whatever.

Q. Did you state to them, as a reason why you desired to continue the use of this imperial china body, that you had had it in constant use in your house, printed on that body?

A. No, sir.

Q. And that you were satisfied with it?

A. No, sir.

Q. Didn't you have it in use?

A. I did, sir.

Q. And what was the result?

A. Just the same as you see from the samples I have presented here to day.

Q. Then, the samples you have got here, are they from sets that you took from there at that time of which they spoke?

A. This (referring to sample) is the first line of this pattern—blue; it is about the first we printed under-glazed; that (referring to sample) I took to Mr. Stahl's house when I lived there; and this (referring to sample) was the last of that class of goods that we made; that is a fair sample of what was made afterwards; this was the first.

Q. This is of one set?

A. Yes, sir.

Q. What was the result with reference to the standing of the goods—the wearing of them?

A. Just as you see them here; they all crazed badly pretty soon after we put them into use; some were kept around the house and others were destroyed, broken up and thrown away.

Q. That is a fair sample of it?

A. Yes, sir; they all went just like this piece (illustrating), they were unfit for use; this is the under-glazed and some of the first goods that was made of the white imperial china; all of them have been destroyed, just as I or anybody else would put in a dinner set and they became broken or crazed; these are the goods that they so highly recommended.

Q. (By the Court)—Let the witness state when the defects first appeared, of which complaint is made.

A. Do you desire to know from my own observation or from my customers.

Q. I speak of these particular articles of under-glazed printed ware.

A. I cannot exactly state the time, but pretty soon after that; shortly after we commenced to make the under-glazed ware.

Q. (Further direct)—Did Mr. Wood ever demand to be released from his agreement by reason of your insistment upon his making the printed ware upon this imperial china body?

A. No, sir; not to my knowledge.

Q. Did you at any time threaten him to put another man in his place if he refused to go on with the manufacture of the under-glazed ware upon this body?

A. Never.

Q. Did he ever tell you he had no confidence in the making of the under-glazed ware on the imperial china body?

A. Not until after they came back in quantities, crazed.

Q. After the damage was done then?

A. Yes, sir.

Q. Did you at any time express your satisfaction at the manner in which the goods were fired at the pottery in the presence of Mr. Brunt, the witness here to-day?

A. No, sir.

Q. Did you have any talk with him at all about that?

A. Nothing whatever.

Q. Did you come in contact with him at all?

A. No, sir.

Q. Or confer with him in reference to the pottery?

A. No, sir; his part of the business was in the workmanship.

Q. Did you ever say to Messrs. Wood and Barlow that you could not afford to make bone china for the purpose of having Mr. Magowan give it away to his personal friends?

A. No, sir.

Q. Do you know anything of the giving away of bone china by him?

A. No, sir.

Q. Did you ever procure a lock to be placed on the glossed ware-room door in order to prevent Mr. Magowan getting at the bone china and giving it away?

A. No, sir.

Q. Did you ever have enough bone china anyway, either to give away or sell in quantities?

A. No, sir.

By Mr. Vroom—A question was asked the other day as to when the crazed china was made and when it was returned, and I have a letter now in my hand from Abram French & Company in relation to it, which I will offer in evidence.

[Objected to and overruled.]

Cross-examined (by Mr. Aitkin):

Q. Didn't you employ a man to take charge of the glossed ware-rooms—didn't your firm?

A. At what time?

Q. While Wood and Barlow were there?

A. We suggested that we should have a man there to take charge.

Q. Wasn't there a man there to take charge?

A. As warehouse man.

Q. Didn't you employ Mr. Nevius?

A. He was there before Mr. Wood came.

Q. Didn't he continue there?

A. Yes, sir.

Q. In charge of the glossed ware-room?

A. Under Mr. Wood's management.

Q. Didn't you employ Mr. Gruesser to work in the ware-room?

A. That was after Mr. Nevius had left there.

Q. Didn't you employ him yourself?

A. Didn't I, myself? no, sir; the firm employed him.

Q. Do you know who did employ him?

A. I say the firm did.

Q. What firm?

A. Me and my partners; myself, Mr. Magowan and Mr. Donoher.

Q. To take charge of the ware-room?

A. Yes, sir; and at the same time as a warehouse man.

Q. This ware that you say crazed so soon, why didn't you stop making it right away?

A. Why didn't we?

Q. Yes.

A. I don't know why we didn't stop.

Q. Did you employ Mr. Swan to take charge of the decorating department, including the under-glazed printing, and then discharge him in a short time because he wasn't satisfactory?

A. Yes, sir; we employed Mr. Swan.

Q. Did you discharge him because he wasn't satisfactory?

A. Merely because he wouldn't stay there under Mr.

Wood's instructions or management; he wouldn't stay with us on that account.

Q. (By the Court)—Did he leave on his own account?

A. Simply because he would not work under Mr. Wood.

Re-direct:

Q. You didn't continue the manufacture of the under-glazed ware very long after you found out it crazed?

A. No, sir; not very long; of course, we had some orders to fill, and as we were in it we had to complete what we had in process of manufacture.

Q. You didn't go on after that?

A. No, sir; not after the goods began to come back in the quantity that they did.

Q. Then you discontinued their manufacture entirely?

A. Yes, sir.

Frank Magowan, a witness heretofore sworn in his own behalf, is recalled for further direct examination.

By Mr. Vroom:

Q. Mr. Barlow and Mr. Wood swore that you wanted the agreement with them made for three years and two months because at that time all your paper would have matured; did you make any representations to them of that kind?

A. No, sir; we had no paper to mature.

Q. The firm of Alpaugh & Magowan had just been organized then?

A. Yes, sir; and paid cash, as you know.

Q. Mr. Barlow has testified that the first shape used was the Brunswick, and that you still continue to use it at the pottery; is that so?

A. No, sir; it was abandoned before he left us, because it was a failure, and that was the only reason why the Windsor was gotten up, because the Brunswick was a failure and we had to have something to sell the goods with; he came to my office and was instructed by me to get up an absolutely square shape.

Q. Mr. Wood has stated that the arbitration between you and Coxons was had at his suggestion?

A. No, sir; he knew nothing about it, except what he heard outside.

Q. Did you have any conference with him of any kind in reference to your settlement with Mr. Coxon?

A. No, sir; that was a matter between Mr. Alpaugh and myself.

Q. Did you ever at any time mention Mr. Steward's name to him as the party likely to aid him in purchasing a pottery?

A. No, sir.

Q. Did you recommend him at any time to call upon James Moses as one likely to assist him?

A. No, sir; on the contrary, I knew that Mr. Moses didn't like him.

Q. Did Mr. Wood come out to see you at the Trenton Rubber Works about discontinuing the manufacture of the under-glazed printed ware upon the imperial china body?

A. No, sir; not to my knowledge; in fact, he never came to see me there about that.

Q. Did you ever insist that it should be made upon that body?

A. No, sir.

Q. Did you know anything at all about the ingredients of the mixing at that time?

A. No, sir; never at all.

Q. Did you at any time say you would release him from all responsibility if he went on printing on that body?

A. No, sir; because we solely depended upon them and their knowledge.

Q. Did he ever lead you to believe that this transfer printing upon the biscuit was an experiment on his part?

A. Never, or I never would have agreed to go on with it.

Q. Did you ever get enough bone china through to give away or sell?

A. No, sir.

Q. Did you ever distribute that to your personal friends?

A. No, sir; I am not aware of it.

Q. Did you in an interview with Mr. James Barlow, after the first of January, 1886, or thereabouts, ever urge him to stay there alone to run your pottery?

A. No, sir.

Q. You heard his testimony to day with reference to that?
A. Yes, sir; and it is not true.
Q. It is not true?
A. No, sir.
Q. Did you in any way intimate to him that you desired to discharge Wood and continue him?
A. No, sir.

Not cross-examined.

Defendants' counsel then offered in evidence several pieces of ware, which were marked as exhibits 10 in the case.

Rest all.

Adjourned.

EXHIBITS EX-PARTE COMPLAINANTS.

EXHIBIT W 1.

Agreement made this seventh day of May, A. D. eighteen hundred and eighty-three, between Spencer M. Alpaugh and Frank A. Magowan, of the city of Trenton, New Jersey, party of the first part, and William Wood, of the township of Lawrence, and James Barlow, of the city of Trenton, in the county of Mercer, and State of New Jersey, parties of the second part, witnesseth:

That whereas, the said party of the first part own and operate a pottery manufactory in the city of Trenton, heretofore known as the pottery of Coxon and Company; and whereas, they have agreed to employ, and have employed, the said parties of the second part respectively, to superintend and manage the manufacturing part of the business of said pottery, including the decorating department, taking entire charge of the works, employment of hands and selection of materials.

Therefore, it is agreed between the said parties as follows: The said Alpaugh and Magowan have agreed, and by these presents do agree, to employ, and do hereby employ, the said William Wood and said James Barlow to take the entire charge of the manufacturing department of their said pottery, including the decorating department, for the term of three years and two months from the date of this agreement; and the said parties of the second part do hereby agree to enter the employment of the said party of the first part as aforesaid, and to take the entire charge of the manufacturing department of said pottery, and to give their whole time, labor and skill towards the proper management of said business during the term aforesaid.

And the said party of the first part do agree that they, the said parties of the second part, shall receive for their said services during the said period the salary of three

thousand dollars a year each, payable in weekly payments; and do further agree that said Wood and Barlow shall also have and be entitled to ten per cent. of the net profits of said business during said period.

And said party of the first part do guarantee that said profits shall bring in to said party of the second part a sum of at least two thousand dollars a year to each of them; and said salary and profits to begin on the twenty-first day of May, eighteen hundred and eighty-three.

In witness whereof the said parties have hereto set their hands and seals the day and year first above written.

SPENCER M. ALPAUGH, [Seal].
F. MAGOWAN, [Seal].
WILLIAM WOOD, [Seal].
JAMES BARLOW. [Seal].

Signed, sealed and delivered in the presence of
GEO. R. COOK.

Trenton, N. J., May 7, '83.

EXHIBIT W 2.

EMPIRE POTTERY,
P. O. Box 235.
ALPAUGH & MAGOWAN, PROPRIETORS.
TRENTON, N. J., U. S. A., November 5th, 1885.

WM. WOOD, ESQ.

Dear Sir:

Referring to the understanding had with you, in the presence of both members of our firm (Mr. Alpaugh and Mr. Magowan), it is agreed that the management, and the result of your management of our Pottery, from this time forward, shall be as follows:

First—The percentage of the cost and distribution of our goods must not exceed thirty-two per cent. (32%) on the Net Sales.

Second—The proportion of Apprentices, in and about the Shops and about the Kilns, must be at least two Apprentices

to every one Journeyman, and not any greater number of Journeymen, as compared with Apprentices, than is now employed at some other Potteries.

Third—The good workmanship of the ware is to be maintained by a thorough system of inspection while in the green state, and before it is counted or placed in the green rooms.

Fourth—All ware that is defective in workmanship, or improperly made, or any ware that may have kiln dirt, or other defects accruing from faulty kilnwork or handling, must be paid for and the loss assumed by the workman who is to blame.

Fifth—The "score-dozen" system of placing and drawing all kilns is to be commenced at once, and upon as low a basis of cost to us as to others who are now using this system.

Sixth—All ware damaged, chipped, broken, or in any other way injured about the kilns, either in the biscuit or glost state, and all manufactured ware damaged, broken or injured in any way, must be set aside and the value thereof to be appraised by a man we may assign for that purpose.

Seventh—A thorough and rigid system of selection is to be adopted and enforced at once, and nothing but what is strictly "thirds" are to be set aside under that class; and all "seconds" or "thirds" that can be utilized in any patterns adapted to cover their slight defects must be done.

Eighth—No "Saggers" are to be purchased, but all are to be produced here at the Pottery that we use.

Ninth—The quantity of ware contained in each biscuit or glost kiln, as it is drawn, is to be carefully kept, and the value of it to be figured out and reported in writing to the office as soon as the drawing is completed.

Tenth—Mr. Mulford, or any one we might appoint, is to assist in carrying out the system of counting the ware after the inspectors have completed their work. He is also to keep a perfect record of all damaged ware, "saggers," etc., about the Pottery at all times, and report to us any deviation from this understanding that may occur.

Eleventh—Any instructions that we may suggest, to bring about this, or any better results, are to be carried out by

you, if they are practicable in other Potteries, and are for the best interests of the firm.

Twelfth—It is understood that Mr. James Barlow is to assume the management and responsibility of the clay shops, oversee the drawing and placing of all kilns, the making of the "saggers," the biscuit ware rooms, the dipping of all the ware, and anything else pertaining to the above departments.

Thirteenth—And William Wood is to assume the management and responsibility of the mixing of the bodies and glazes and "saggers," etc., oversee the firing of all the kilns, the ware rooms and the decorating department of our Pottery, and everything else directly pertaining to the above-mentioned departments.

Fourteenth—It is further understood that yourself and Mr. James Barlow are to coöperate in conjunction with the positions assigned each, for the management of our Pottery, and to bring about the results named above.

(Signed) ALPAUGH & MAGOWAN.

EXHIBIT W 3.

This agreement made this seventh day of May, A. D. eighteen hundred and eighty-three, between Spencer M. Alpaugh and Frank A. Magowan, of the one part, and James Barlow, of the other part, witnesseth: Whereas, by a certain agreement made this day between said parties, said parties of the first part have employed the said James Barlow, together with one William Wood, to superintend the manufacturing department of their pottery for a certain term, at a certain salary and certain share of profits; and whereas, the said James Barlow is now and has been in the employ of James Moses, and under a contract of service not yet expired; and whereas, said Barlow will be unable to complete his said service with said Moses, and enter the service of said Alpaugh & Magowan, under the agreement above stated.

Now, therefore, the said Alpaugh & Magowan do agree to and with the said James Barlow, to indemnify him against

all damages or compensation he may be compelled to pay to said James Moses for breach of his contract of service aforesaid; and do hereby agree to defend any suit that may be brought against said Barlow by said Moses, and pay all costs and damages that may be awarded against him in said suit, by reason of his contract with said Moses not being terminated as stipulated.

In witness whereof, the said parties have hereunto set their hands and seals, the day and year first above written.

SPENCER M. ALPAUGH, [Seal].
F. A. MAGOWAN, [Seal].
JAMES BARLOW. [Seal].

Witness present—GEO. R. COOK.
Trenton, N. J., May 7, '83.

EXHIBIT W. 4.

TRENTON, NEW JERSEY, U. S. A., April, 1885.

ANNOUNCEMENT.

To the Trade:—

We take pleasure in presenting to the Crockery Trade of the United States a copy of our Illustrated Catalogue and Descriptive Price List; Edition 1885.

Having gone to a very heavy expense of time and money to get out this book, we trust those who receive a copy will carefully preserve it for future reference.

This is our first effort to give a detailed illustration of our products, and we feel the book is sufficiently elaborate to suit every desire. But we shall be glad to receive any suggestions for improvement that may occur to the reader for use in our next edition, as we are always willing to learn.

We shall produce new ideas in shapes and decorations constantly, cuts of which will be sent to every one who holds a copy of this book for insertion on the stubs in the back part of the price list.

Notwithstanding the enormous productive facilities of this Pottery we have been obliged to discontinue the manufacture of White Granite and C. C. ware, and confine ourselves

exclusively to the production of our present leader; a high grade of extra quality plain and decorated thin porcelain Dinner, Tea and Toilet ware, which we have named

IMPERIAL CHINA.

We claim for this Imperial China a quality, durability and finish that is unrivalled. It is superior to any thin porcelain made in America, and fully equal in every respect to foreign importation—we make no exception.

Our shapes and decorations have been conceded by those who have made a comparison to be the most perfect ever placed upon the market. For beauty, symmetry and utility they are without a rival.

We claim to offer the Trade a superior quality of thin porcelain; a greater variety and finer shapes and decorations than can be had from any other concern in this country, while our prices are always as low as any other manufacturers. All we ask to prove the accuracy of these claims is a competitive test.

Our Pottery and productive facilities being the largest in the world, we are prepared to execute all orders with care and despatch.

We are the only manufacturers in this country who back their goods with a WARRANTY. We enclose a copy of this iron-clad document which speaks for itself.

We extend our sincere thanks to those of our readers who have placed their orders with us in the past, and respectfully solicit a continuance of their valued favors. With best wishes to all, we remain,

Very respectfully yours,

ALPAUGH & MAGOWAN, Proprietors.

Issued at the Works, Trenton, N. J., April, 1885.

All Former Price Lists are Void.

EXHIBIT W 5.

OFFICE OF EMPIRE POTTERY,
P. O. Box 235,
ALPAUGH & MAGOWAN.
TRENTON, N. J., ..., 188...

We have sent our traveler, Mr. Wm. H. Beable, to see you personally relative to handling our Imperial China or FINEST QUALITY THIN PORCELAIN, and our Vitrified Hotel China, both Plain and Decorated Ware, in quantities.

He comes prepared to quote you Special Prices, etc., which we beg you will consider confidential, as we cannot afford to offer them except to a few houses.

He carries a complete and fine assortment of above specialties, which include the celebrated "Brunswick," square shape and the new "Empress" Dinner, Tea and Toilet Sets.

These two designs are pronounced, not only by the trade, but by our competitors as well, to be the finest American shape and "quickest seller" ever produced. All we ask to prove this, is simply a trial order—no matter how small—for a few sets, and, when you are once started with us, we pledge ourselves to do all in our power to retain and increase your patronage by giving your commands our immediate attention, shipping you goods at any date you may desire, and keeping you on the "INSIDE" in discounts, etc.

Recollect, we are the only manufacturers who have proved, by actual test, that our ware is the best, both in quality, durability and finish. In American goods we claim to excel—as compared with the English we guarantee ours fully equal in every respect to the best. As evidence of this fact, we are the only pottery who furnish an "iron-clad" WARRANTY with every invoice, duly signed by the firm, which is absolute protection against loss from crazed or imperfect goods.

Our pottery and productive facilities are the largest and best organized in the country, so we are prepared to fill all orders immediately upon receipt, and we invariably advise our customers, by personal letter, just when goods will leave the factory.

Should you desire anything prior to the arrival of Mr. Beable, and will write us what you want, we will advise you by return mail, with full particulars.

Soliciting your favors, and at your service, we remain,

Yours truly,

EMPIRE POTTERY.

EXHIBIT W 6.

"VICTORY."

American Sanitary Earthenware not only EQUAL but SUPERIOR to any of foreign manufacture, now being produced at the Empire Pottery. Competitive test by the most prominent and practical experts of this country has verified this claim.

The delusive arguments presented to the Trade by certain Importers of Sanitary Ware, who are interested in foreign Potteries, should no longer be entertained by Jobbers or Dealers, for in America we not only have the finest clays and crude materials ever discovered, but the Empire Pottery has the same practical Managers and the same experienced workmen who have been prominently identified with the largest and most prominent English Sanitary Ware Potteries from boyhood, and bring to us the benefit of their long and valuable experience.

It is, therefore, self-evident that the product of the Empire Pottery is far SUPERIOR in QUALITY, DURABILITY and FINISH to any of foreign make. At the same time, Sanitary Ware purchased at home not only saves the expense and delays of importation, duties, etc., but gives the trade the benefit of immediate shipments and easy replenishment of stock, avoiding the carrying of large stocks of ware, etc.

In further evidence of the superiority of our goods, we invite a perusal of the annexed "WARRANTY." Every article manufactured by the Empire Pottery, and bearing their brand, is fully covered by this iron-clad document as a GUARANTEE AGAINST CRAZAGE or imperfections of any kind whatever. It is a guarantee that our ware will not show the annoying defect of Crazage, common to the goods of

many foreign Potteries, and which makes the ware dirty and offensive by absorbing the urine, etc.

Trusting we may be favored with at least a trial order, for competitive test, that our claims of superiority may be verified, and always at your service, we remain,

Very respectfully yours,

EMPIRE POTTERY,

ALPAUGH, MAGOWAN & Co., Proprietors.

Every invoice of Sanitary Ware sent out is accompanied by the following iron-clad document, duly signed and executed by the firm :

WARRANTY.

All the articles referred to in this invoice are *fully warranted in every respect*, and are subject to the following Guarantee: Should any of the Ware bearing our brand be found defective in material, manufacture, selection or durability, *even after being carried in stock for a period of time, or put to the severest test*, we will replace the same, *free of charge*, on return of the defective goods, and we hereby agree to replace goods within ten days after receiving notice and goods.

NOTICE.—All goods bearing our brand are warranted best selection, and guaranteed absolutely against crazage of any kind whatever.

We stand fairly and squarely behind this Warranty, and all such defective goods may be returned by fast freight, and at *our expense.* We furthermore warrant perfect satisfaction to all concerned.

EMPIRE POTTERY,

(Signed) ALPAUGH, MAGOWAN & Co.,
Proprietors.

Issued at our Pottery Works,
TRENTON, NEW JERSEY, U. S. A., May, 1885.

See Price List on other Side.

EXHIBIT C 8.

W. Wood,
June 2, '83, to July 1, '84,
Dr.

To cash drawn, ...		$3,130 25
Cr.		
By salary, May 19, '83, July 1, 84, . .		$3,365 40
" Com., ...		2,000 00
		$5,365 40
		3,130 25 10
		$2,235 15

Alpaugh & Magowan,
Per E. C. Mulford.

Sept. 18, '84.

EXHIBIT C 9.

W. Wood,
Dr. To

July 1st, Cash and Mdse., ...		$4,611 73
Cr. To		
July 1st, Salary, ...		4,525 15 20
		$86 58

Cr.		
June, 1884, ...	$2,000 00	
July, 1885, ...	2,000 00	
	$4,000 00	
	86 58	
	$3,913 42	Cr.

Due W. A. Wood.
E. C. M.

Sept. 22, '85.
47

EXHIBIT C 10.

J. Barlow,
June 2, '83, to July 1, '84,

Dr. cash drawn, ...	$2,980 00
Cr.	
By Salary, May 19, '83, to July 1, '84, .	$3,365 40
Com., ...	2,000 00
	$5,365 40
	2,980 00
	$2,385 40

Alpaugh & Magowan,
Sept. 18, '84. Per E. C. Mulford.

EXHIBIT C 11.

J. Barlow,

To Oct. 1st, am't to credit, ...	$225 40
Less toilet set, ...	7 00
	$218 40
Profit ac.	
Bal. due J. B., ...	$4,000 00

Oct. 1, '85. E. C. Mulford.

EXHIBIT C 12.

Office of Empire Pottery,
P. O. Box 235.
Alpaugh & Magowan.
Trenton, N. J., August 11th, 1884.

Mr. W. H. Beable,
Plankinton House,
Milwaukee, Wis.

Dear Sir:—We beg leave to inform you that at a meeting of the firm yesterday, it was decided to discontinue the manufacture of White Granite and C. C. Ware, and to devote our entire attention to the production of Imperial

China, both plain and decorated, and to the manufacture of Vitrified Transparent Hotel China, which we expect to have ready for the market within the next three weeks. As we now have the moulds, etc., with which to make the goods we wish you to commence booking orders for this V. T. H. C. at once. You can guarantee it equal in all respects to the goods made by the Greenwood Pottery or by Staples, Bell & Co. Quote the following prices:

Perfect and Special selection, . 25 per cent. off list.
Regular Selection, ... 30 per cent. off list.
Run-O'-Kiln, ... 40 per cent. off list.

Payments to be made at the regular terms.

In accordance with our instructions you will therefore push the sale of Imperial China and secure all the orders you can for all the orders possible for delivery three weeks hence in V. T. H. C.

You will, then, neither Quote, Sell or accept any orders for White Granite or C. C. Ware, for we will not make any more, and probably have enough orders booked to use up all the stock we have on hand.

This policy on the part of our firm will enable us to carry the largest stock of Thin Ware, both plain and decorated, in the country, and will give us a big advantage over all competitors in the filling of orders.

We propose to carry a sufficient stock of the plain ware and of the most popular decorations to enable us to fill all orders immediately upon receipt, and this will assist you materially in building up a trade, especially with the large dealers.

Please consider this letter confidential, as we do not wish our competitors to know of our action. Knowing that you will readily appreciate the advantage of our new departure, and wishing you success, we remain

Truly yours,

EMPIRE POTTERY,
ALPAUGH & MAGOWAN.

P. S.—Acknowledge receipt of this letter at once, and if you are in need of any samples of the new decorations or new shapes, let us know and they will be forwarded immediately.

EXHIBIT C 13.

OFFICE OF EMPIRE POTTERY,
P. O. Box 235,
ALPAUGH & MAGOWAN.
TRENTON, N. J., October 22d, 1884.

Dictated to Senographer
By F. A. Magowan.

MR. WILLIAM HENRY BEABLE,
Tremont House, Chicago, Ill. :

Dear Sir :—

We have your letter of the 30th ult., from Port Huron, and are glad you were so successful in your new town. As it is across the river only, and at same time on your "native heath," presume you will repeat the dexterous feat every time you go to Detroit. Such successful pilgrimages to untrodden ground we commend.

Mr. Magowan will write you personally with regard to the western crockery matter when he has a little more leisure time, certainly before you reach that place.

Our position on vitrified hotel china is as follows: We have a lot of these new goods now coming through the kiln, which will be out in a few days. These will be used up for samples alone, providing they are perfectly satisfactory. If they are, we shall at once begin the production of them in quantities, and expect to have them ready for shipment in two or three weeks at the latest from date of issue. So we think you are perfectly justified in drumming for trade to be shipped without any practical delay. We regret exceedingly you have none to show the Chicago trade this trip, for we really think you have a good field for it there, better, in fact, than any other town, and we have written Messrs. Titcomb & Pratt about your visit especially also.

Truly yours,
ALPAUGH & MAGOWAN.

EXHIBIT C 14.

OFFICE OF EMPIRE POTTERY,
P. O. Box 235,
ALPAUGH & MAGOWAN.
TRENTON, N. J., July 25th, 1884.

MR. W. H. BEADLE,
c.–o. Messrs. Ruseel House,
Detroit, Mich.

Dear Sir:

I am in receipt of your letter of the 23d inst., and regret to learn of the neglect in forwarding you funds at the proper time; but a great deal of allowance must be made for the boys at the office at the present time, as they have not got in to their new office yet. I instructed Mr. Mulford to wire Messrs. King and Son to cash your draft for one hundred dollars. Hereafter, I will say for our mutual benefit, that all remittances for our travellers will be made on time.

I am pleased to learn you sold several bills in Cleveland and hope you will succeed in making sales to new trade for our Light Imperial China; for as you are aware these are the goods, and the only goods, we propose making or selling. We do not care to have sales for Granite or C. C. goods pushed at all.

Make as many sample sales of Hotel China as possible, for we are confident wherever these goods get into the hands of the first-class houses they will appreciate the quality, workmanship, etc., and favor us with a continuance of their trade.

Sample of campaign plates will be sent you soon, and in the meantime you can sell them, for they will be equal, if not superior, to any others manufactured in Trenton. Other travellers are selling them right along now.

Truly yours,
EMPIRE POTTERY,
F. A. MAGOWAN.

EXHIBIT EX-PARTE DEFENDANTS.

Every invoice we make is accompanied by the following warranty, duly executed and signed by the firm:

WARRANTY.

All the goods referred to in this invoice are *fully warranted in every respect*, and are subject to the following guarantee: Should any of said goods purchased from us be found defective in material, manufacture, selection or durability, *even after being carried in stock for a period of time, or put to severest test*, we will replace the same *free of charge* on return of the defective goods, and we hereby agree to replace goods or refund money *within ten days* after receiving notice and goods.

NOTICE.—*All goods bearing our trade mark are warranted best selection, and guaranteed absolutely against crazage of any kind whatever.*

We stand fairly and squarely behind this warranty, and all such defective goods may be returned by fast freight and at *our expense.* We furthermore warrant perfect satisfaction to all concerned.

Truly yours,
EMPIRE POTTERY.
(Signed) ALPAUGH & MAGOWAN.

Issued at our Pottery Works,
TRENTON, NEW JERSEY, U. S. A., 1884.

OPINION.

[Filed November 30th, 1887.]

BIRD, V. C. The complainants ask that the defendants may be ordered to account to them for services rendered under an agreement. On the 7th day of May, 1883, the complainants and defendants entered into a written agreement in and by which it was recited that the said defendants owned and operated a pottery manufactory in the city of Trenton, and that they had agreed to employ the said complainants to superintend and manage the manufacturing part of the business, including the decorating department, and taking the entire charge of the works, the employment of hands and the selection of materials; after which recital, it was agreed between the said parties that the said defendants should employ the complainants to take such entire charge and management of the manufacturing department of their pottery, including the decorating department, for the term of three years and two months from the date of said agreement; and the complainants agreed to enter into the employment of said defendants and to take the entire charge of the manufacturing department of said pottery, and to give their whole time, labor and skill towards the proper management of the said business during said term; and the said defendants further agreed that they would pay for said services during the said period, a salary of $3,000 a year to each of the complainants, in weekly payments, and also ten per cent. of the profits of the business, which profits they guaranteed should produce to the said complainants at least the sum of $2,000 a year each. Under this agreement the complainants took charge of the works of the defendants. They say in their bill that they were practical operators in pottery work. They continued in the employ of the defendants until they were discharged in the month of March, 1885. Their salary of $3,000 a year was all paid, except a very small amount, but nothing additional—no part of the

profits, which it is alleged were made, have been paid. They say that they are ignorant of the accounts of the business, and pray that an accounting may be ordered.

The defendants admit the agreement, and that the complainants entered into their employ thereunder, and continued therein until they were discharged in March, 1885, just prior to the time when the agreement would have expired by its own limitation. They insist that there is nothing due the complainants, because of their unskillful management of the business which was committed to their charge under and by virtue of the agreement. They say that they had no practical knowledge themselves of the manufacture of pottery, and relied upon the complainants, but that they so unfaithfully performed their duties that great loss resulted to the defendants.

Ought there be an accounting? And whether an accounting or not, ought the defendants to be charged with the two thousand dollars profits which they guaranteed to the complainants? The accounting is resisted by the defendants on the ground of unskillful management of their pottery by the complainants. It is alleged, because of such unskillful management, they suffered great loss, and that no profits were made. It is undoubtedly true that certain portions of the work undertaken by the complainants were failures. They undertook to manufacture what was called bone china, imperial china, vitrified china, and under-glazed decorated ware, and all proved failures except, perhaps, the imperial china, of which more hereafter. The responsibility for these undertakings and for the failures is all charged by the defendants upon the complainants. It is insisted that the complainants represented themselves as able to make the manufacture of these various wares a complete success, and that they, in so many words, guaranteed the defendants that such should be the result of the undertaking. Upon such representations, the defendants permitted the complainants to proceed to make the necessary purchases of the materials and to construct the proper works, and they also advertised such wares, upon the belief that the effort would be successful, and received large orders from Boston, from Chicago and from Pittsburgh and other places, amounting in all to

many thousands of dollars; and that a short time after the orders were filled, complaints were made, and the goods returned, either to the entire loss of the defendants or nearly so. In some instances they were permitted to supply the orders with other goods. It is proper to state that the goods enumerated were not all the goods that were manufactured; they also manufactured at the same establishment, a very large amount of plain white ware, amounting in all to about $200,000 worth each year, yet, in fact, the insistment is, upon the part of the defendants, that no profits resulted to them from the manufacture of wares as a whole.

Taking these statements, and giving the defendants the full benefit of it, the question still arises, under the circumstances of this case, are the complainants entitled to an accounting in order to ascertain whether any profits accrued in this business during the continuance of their services, of which they are entitled to a share? Now, it is to be observed that one of the defendants, Mr. Magowan, was not entirely ignorant of the manufacture of pottery ware. He was inquired of whether he could say of his own knowledge what the quality of certain wares was. He said that he could, and that he was well acquainted with several receipts for manufacturing pottery, and that he had given a great deal of time and attention to it. Answering further upon the subject, he said that he was thoroughly acquainted with it, so much so, that in speakiug of the result of the experiment of manufacturing imperial china, he said that it was very bad indeed. It is important to bear this fact in mind. It is entitled, together with other circumstances, to great weight in the further consideration of the question now before me. Mr. Magowan describes the imperfections of the wares that were produced, specifically characterizes the different defects and the consequences of those defects to the firm. He also tells what produced the defects; he says that they were caused by bad management in and about the kilns and by a lack of attention to the placing of saggers and keeping the saggers in proper condition, so that when the ware was being fired the dirt would fall upon the ware and become mixed with it. It appears from Mr. Magowan's testimony that he knew of this unskillful management and

of these imperfect wares from the first, and that during the first six months of their employment he frequently called the attention of the complainants to them and to the great loss which they, Alpaugh and Magowan, were sustaining by such management According to Mr. Magowan's testimony, so seriously was he impressed with the failure of these complainants to accomplish what the defendants expected of them, that they early contemplated discharging them, and would have done so had it not been for the difficulty of getting any one else to take hold of the work and to carry it on for them. It should be noted, in this connection, that the defendants had every opportunity to know that these peculiar kind of wares, which were called specialties, were not manufactured so as to be acceptable to their customers and that the experiments were failures as a bar to an accounting.

This view of the case is enforced by the consideration that each one of these undertakings to manufacture the specialties above named was an experiment. The testimony makes it perfectly clear that the defendants so understood it. It cannot be said, therefore, that the entire responsibility for the undertaking rested with the complainants and that the consequences should be visited upon them alone. As intimated, within six months an experiment was tried which proved a failure. The defendants were fully apprised of it by the ill success with which the wares met when put upon the market, and by the fact that large numbers of them were returned to them by their customers. They spoke to the complainants about the misfortune in that particular. The complainants acknowledged that they had made a mistake, that the effort was not a success; but the defendants allowed them to go on and to make other experiments in other specialties from time to time, each one, as has been said, being fruitless. The complainants, it is true, were representing themselves to the defendants as expert manufacturers of pottery and as able to manage the large concern of the defendants with success, but, at the same time, they had, in the course of their employment, demonstrated their inability to manufacture the specialties which the defendants thought were so desirable. After this demonstration the

defendants had no right to go further. It seems to me, upon the plainest principles, that they, being the owners of the establishment, not only had the right, but it was their duty to prevent any further experiments unless they were willing to experiment at their own cost. It seems to me that it would be a strange doctrine if servants or employés, whether skilled or unskilled, should be held responsible, without special agreement, for every effort made by them, by way of change or otherwise, to advance the interests of their masters or their employers; and especially does this seem to be the proper view when such change or effort is made with the full knowledge and consent of the master or employer. No steps were taken in these experiments without the defendants' knowledge. They were first consulted with, and in every instance, if they did not advise and order the experiment, they consented thereto. I think it may be safely said that they not only approved of their undertaking, but were anxious that it should be made.

They, no doubt, had great confidence in success, for they required great speed in the work, and they advertised their specialties very extensively long before any goods had actually been produced from the kilns, and solicited orders before there was any demonstration whatever that the success would be complete. These views are strengthened by the facts which will appear in the consideration of the liability of Alpaugh and Magowan on their guarantee of profits to the extent of, at least, $2,000 to Wood and Barlow, which question we will now consider.

Are Alpaugh and Magowan liable on their guarantee to Wood and Barlow that each of their shares of the profits should amount to, at least, $2,000 a year? The language of the agreement respecting this, is in these words:

"And the said party of the first part do agree that they, the said parties of the second part, shall receive for their said services during the said period, the salary of $3,000 a year each, payable in weekly payments. And do further agree that said Wood and Barlow shall also have and be entitled to ten per cent. of the net profits of said business during said period And said party of the first part do guarantee that said profits shall bring in to said party of the

second part a sum of, at least, $2,000 a year to each of them, and said salary and profits to begin on the 21st day of May, 1883."

This is the contract respecting salary and profits put in writing by the parties. It is as plain and exact as words can make it, without polish or circumlocution. Its meaning is as certain as the language is plain. There is no possible ground for doubt because of ambiguous words or phrases, or of conflict between different sentences. Alpaugh and Magowan guaranteed that said profits should bring in to Wood and Barlow a salary of, at least, $2,000 a year to each of them. If any part of the contract is binding upon either of the parties thereto, this certainly is. Under every rule of law this written agreement must prevail, unless it was procured by fraud, or unless there was a mistake made in the insertion of it, or unless it has been varied subsequently by another agreement, or unless Wood and Barlow have been guilty of gross neglect or inefficiency in the discharge of their duties as managers; guilty of neglect or inefficiency of their duty arising out of the written contract.

I cannot find that there was any fraud in the conception of the contract or in its execution. The particular clause arrested the attention of Alpaugh when it was first read in his hearing, and its object and purport were then considered and discussed in the presence of all the parties thereto, and after a clear understanding respecting it, the instrument was signed. And when the circumstances which led to the execution of this contract are presented and considered, it will be seen that Wood and Barlow neither said or did anything by which Alpaugh and Magowan could have been misled or were in any respect deceived.

Barlow had been living in Trenton for years and had the reputation of being a good, practical potter. He had been in the employ of other companies in Trenton and was, as far as appears, a skillful worker. For some time before his engagement with Alpaugh & Magowan he had been in the employ of Mr. James Moses. At the time of this contract he was still in the employ of Mr. Moses, under a contract to work for him for five years, two years of which had yet to run. Mr. Moses was a skillful and successful potter, and

Barlow had the reputation of being an efficient helper to him.

Alpaugh and Magowan had recently purchased the potteries which they were at this time operating, and they desired additional help in the management of them. Magowan had learned of the abilities of Barlow as a practical potter. He sought an interview with Barlow. Through a friend he arranged for a meeting. At this first interview Magowan offered Barlow $30 per week and ten per cent of the profits of the business. Barlow refused the offer and gave as a reason his engagement with Mr. Moses, explaining to Magowan that he was under obligations to him for two years to come. Magowan asked Barlow to procure a release from Mr. Moses, which Barlow endeavored to do, but which Mr. Moses refused. The next day Magowan saw Barlow and learned the fact that Mr. Moses refused to discharge him. But Magowan again pressed Barlow to procure a release, and still Barlow was unsuccessful with Mr. Moses. Magowan then offered $60 a week and ten per cent. of the profits. Barlow made further efforts with Mr. Moses for a release, but Mr. Moses told him that if he left his employ he would prosecute him; and this fact Barlow communicated to Magowan; and Magowan told Barlow that he would guarantee to protect him against any action for damages brought by Mr. Moses. Barlow still refused to engage with him. Magowan then called in the aid of Wood, one of the complainants, who was brother-in-law to Barlow, and also a practical potter. Wood called on Barlow at the request of Magowan and told Barlow that Magowan had offered him $60 a week and also ten per cent. of the profits, and was willing to guarantee that the profits would amount to, at least, $2,000 a year, and that he had authorized him to say that he would give the same to Barlow. After this interview a meeting of Magowan, Barlow, and Wood was arranged for, on the following Sunday, at the house of Wood. They had such meeting on the Sunday named, and Magowan assured Wood and Barlow that he would give them the sum of $60 per week each, and would guarantee to them that their share of the profits should be, at least, $2,000 a year each. At that meeting Magowan also prom-

ised to indemnify Barlow against any action which Mr. Moses might bring against him for a breach of his contract, and a willingness to express it in writing. Barlow then promised to enter into the employ of Alpaugh & Magowan. It was understood that Wood and Barlow should have the agreement prepared in accordance with the terms then stipulated, and it was accordingly prepared and signed as above indicated, and so also was the agreement to indemnify Barlow against all costs and damages in any action by Mr. Moses. As I have intimated, when the agreement was read previous to the signing, Alpaugh expressed some surprise that the clause guaranteeing that the profits should amount to $2,000 a year to each of the complainants, but the matter was discussed and the agreement was signed by the parties with that clause unchanged. It is an important fact that the attention of the parties was particularly called to this branch of the contract. It shows, beyond qualification, that it was regarded as important by all the parties thereto; so important, that the complainants were careful to have it inserted in the plainest terms in the agreement, and that Alpaugh, who had taken no great part in the negotiations, should speak of it when the agreement was first read.

From this brief narration, it is very evident that Magowan was extremely anxious to secure the services of Wood and Barlow, and this accounts, in a great part, for the guarantee clause in the contract that the share of the profits to Wood and Barlow should be at least $2,000 a year for each. It is of great consequence to consider that Magowan was so unceasing in his efforts, so unchanging in his desire to have Wood and Barlow enter into his services that he was not only willing to pay an extraordinary salary for their services by the week, and to guarantee them two-thirds as much more at the end of each year, with a flattering prospect of an additional amount by way of profits, but was also willing to agree to indemnify Barlow against all the costs and expenses that might result to him from the breach of his contract with Mr. Moses. There is nothing in the case that leads me to the slightest conviction that there was any fraud or any misunderstanding whatever between these parties prior to or at the time of the execution of this agreement.

I am satisfied that the complainants were what they were understood to be—good practical potters. I am satisfied that they held out no inducements to either Alpaugh or Magowan that they were anything else. Whatever either of the defendants may have imagined or supposed, there is nothing in the case to have justified them in believing that either Wood or Barlow were greatly skilled beyond their fellows in the art in which they were engaged. Taking the case as it stands, considering the circumstances of the parties, the knowledge which Alpaugh and Magowan had of the business, and the undoubted opportunities which they had to know of the qualifications and experience of Wood and Barlow, they were not deceived or misled by either Wood or Barlow. I do not wish to be understood as saying that Alpaugh and Magowan have not sworn that Wood and Barlow represented to them that they could manufacture certain kinds of ware which, upon trial, they did not succeed in doing. But whatever on this head has been asserted by Alpaugh and Magowan has been with equal emphasis denied by Wood and Barlow, not only by flat contradiction, but by circumstantial detail. This being so, and the burden being on the defendants, the well established rule requiring a preponderance of evidence before judgment, I cannot conclude in favor of Alpaugh and Magowan in this branch of the case.

And on this same point consider the fact that Alpaugh and Magowan had become leading pottery manufacturers in Trenton, and had, for some time, an abundant opportunity of becoming acquainted with the skilled potters, and did inquire respecting the abilities of Wood and Barlow, and did learn beyond question the exact position which they occupied as artisans. Both Wood and Barlow had been for years employed in the trade in Trenton. Both of them, as far as appears, had been successful; and yet neither of them possessed all the secrets of the trade, nor the ability, either from experience or education, of manufacturing every kind of ware known to the trade. This shows the situation of the parties, the opportunities which Alpaugh and Magowan had for acquiring information, and the knowledge which they must have had respecting the ability of these complain-

ants when these negotiations were commenced and concluded. And the truth of these observations is established, to my mind, beyond question, when it is considered that Magowan pressed his suit with such pertinacity as to induce Barlow to leave Mr. Moses, and at the same time to offer, by way of guarantee, $2,000 a year out of the profits. And again, how can I conclude that Wood and Barlow were not, in truth, good, practical potters, when it is established that under their management about $200,000 worth of ware was manufactured at the defendants' works each year, not taking into the account the experiments referred to?

There was no mistake in the execution of the agreement. It undoubtedly expressed the offer of Magowan, and the terms on which Wood and Barlow consented to enter into the employ of Alpaugh & Magowan. That the agreement itself is free from any such charge, is manifest from the fact that no effort has been made at reformation. Nor can I find that there was any change in this contract, either verbal or written, after its execution. There is nothing which shows the slightest intention of the parties to make any modification of it. Whatever rights accrued or obligations were incurred, they were independent of the original written contract, and, if any were, must be considered separately from it. After the fullest investigation, I can lay hold of nothing that will justify me in holding that such rights or obligations hinge upon the written contract. If there should be found any such rights or obligations to exist, another question arises. In such case, should Alpaugh and Magowan show an equitable claim, could it be set off, or could there be recoupment? Under the practice in this court, I think not. This, I think, is established on the firmest footing by the case of *Trotter* v. *Lehigh.*

The merits of this branch of the case, resting upon the facts as detailed by the witnesses, I will now proceed to look into, going upon the ground of total failure of consideration.

But Alpaugh and Magowan insist that they are not bound to comply with the terms of the contract as to this guarantee of $2,000 a year to each of the complainants, because there were no profits, and because of the failure of Wood

and Barlow to manage the manufacture of pottery successfully. The defendants insist that all depended upon the successful operation of the concern; that the agreement had for its foundation the skill and the ability of the complainants to manage the pottery with profit; that this consideration was the very life of the agreement itself. In one respect this is undoubtedly so, and it may well be admitted that Alpaugh and Magowan would not have entered into an agreement to pay $5,000 a year to each of their managers, unless, to their own minds, at least, there were the best of assurances of large profits from the operation of their establishment. This is of great importance, and I have not overlooked it. But when the rights of the other contracting parties are considered, a different view is presented. As to them, it may well be inferred that whether there were profits or not, is not so much the question, for, if Alpaugh and Magowan can refuse to pay the $2,000 (which it is said they guaranteed to pay), because there were no profits, just as well might they refuse to pay any part of the compensation of $60 a week for service. The defendants were under just as much obligation to pay the one as the other, and could as well be relieved from the one as from the other; the same reasoning which would excuse payment in one case would in the other; both are alike binding by way of contract. In one case it is an agreement to pay $60 a week, and in the other $2,000 a year, the only difference being in the language used to express the obligation. The one is a simple promise, the other is enforced by the stronger term, it may be, of the word "guarantee." The $2,000 offered out of the profits were just as much compensation for labor and services as the $60 per week, and if Wood and Barlow failed to earn the one, because of negligence or unskillfulness, they certainly failed to earn the other. The same rules of law and the same reasoning must apply to both alike.

The question remains, whether or not the defendants can escape their obligation to pay the $2,000 a year profits, because of the unskillful or negligent management of the potteries upon the part of Wood and Barlow. In determining this question, I must consider the extent to which

Alpaugh and Magowan desired to apply this negligence and unskillfulness. I have said that the testimony satisfies me that Wood and Barlow were, in the just sense of the term, good, practical potters. I find nothing in the case to satisfy me that during their employment with Alpaugh and Magowan they did anything to falsify their reputation in this respect. Now, to what extent does Alpaugh and Magowan desire to make application of their charge of inability and mismanagement? Is it to the whole of the business, to the entire management, to all of the output of the plant, to everything that was manufactured there and put upon the market? No; they only seek to charge Wood and Barlow with inability, unskillfulness, or mismanagement with respect to the vitrified china, the bone china, the under-glazed decorated ware, and, perhaps, with portions of the imperial china. When the contract was made, none of these wares were made at the pottery of the defendants; other kinds of wares were made to a very large extent. As I have intimated, it is most clear that the vitrified china, the bone china, and the under-glazed decorated ware were not among the goods commonly manufactured in this country. The under-glazed decorated ware was manufactured in Trenton, and, it may be, elsewhere in this country; and the manufacture of it at other places in Trenton had been made a success; but from the testimony, I am led to believe that that success depended upon knowledge of some branch of the manufacture which was a secret; for one of the principal manufacturers of that ware was questioned upon that very point and declined to give the secret, which he supposed he enjoyed, to the public. Now, therefore, admitting that, with respect to these wares, Wood and Barlow did not succeed, should the defense, so set up by Alpaugh and Magowan, with respect to the $2,000 a year, prevail? In other words, is the servant or employé, whatever his position may be, chargeable with the failure of every new enterprise which may be entered into, whether it be with his consent and approval or even recommendation and assurance of successs or not? In my judgment, under the law, this question must be answered in the negative. I can discover no principle of law that binds a servant or employé to that which is equiv-

alent to compensation in damages for the failure of any extraordinary undertaking, unless he has expressly bound himself thereto. Simple recommendation or assurance is not equivalent to a contract of indemnity. There seems to be nothing, anywhere in the law of contracts, that binds a servant to the consequences of the extraordinary undertakings which he is directed to engage in by his master or employer, however enthusiastic his servant may be in the expression of the belief or assurance that he can make it a success. I am speaking now with sole reference to the facts in the case before me. The undertakings to which my thoughts are directed are those which were peculiar, novel, extraordinary in themselves, and from which, if they had been successful, the defendants expected to reap prodigious profits. These peculiar wares were not made when the contract was entered into at this pottery. They afterwards were suggested, and whether by Wood and Barlow or not cannot be material. The manufacture of them was not undertaken until Alpaugh and Magowan had been fully consulted respecting it, and their judgment and approval given. Alpaugh and Magowan insist that Wood and Barlow in each instance guaranteed success; but this is unqualifiedly denied by Wood and Barlow. These contradictions, like many other absolute and direct contradictions in the case, I cannot reconcile; and I am free to say that there is nothing in the case which enables me to form a satisfactory conclusion that the complainants did, in any binding sense, assure the defendants that they could make the specialties above named. I desire to say, however, that it is clear to a demonstration that when the defendants engaged the complainants to manage their pottery the defendants were full of hope and enthusiasm, and expected large rewards for their undertaking, profits amounting to $50,000 or $60,000 each year, and were thus induced to offer the salaries for the services of the complainants which they afterwards found a burden, and which they now seek to rid themselves of; and I am equally well satisfied that the complainants, elated with the flattering offers which had been held out to them by the defendants, and which had been guaranteed to them by the agreement, undertook the work of managing these potteries

with a like enthusiasm, and were encouraged thereby to make every effort to please their employers and thereby reward themselves by greatly increasing the profits of the concern. But the very first efforts at the manufacture of specialties were unsuccessful. As said above, before six months had elapsed this was demonstrated to both Alpaugh and Magowan. Yet, in the face of this warning, they continued or allowed their managers, Wood and Barlow, to continue their experiments, now in one direction and now in another; at one time with vitrified china, at another with bone china; not only allowed but urged them on in this new work. It is not said that Alpaugh and Magowan were absolutely ignorant of the qualities of these wares. They could not mould or fashion them; they did not know how to glaze or temper them; they did not know how to burn or when to draw the kiln; but they certainly had such a practical knowledge of the quality of the wares as to be able to determine very good from very poor, and to draw some conclusions, in a business way at least, from those efforts which they, themselves, say were total failures. Alpaugh had been engaged as a salesman for at least seven years, and in that respect, amongst pottery men, had earned a very good reputation. With this experience must have come an extensive acquaintance with the quality of the goods which he was engaged in vending, though he could not make them. Magowan declares that he had such knowledge of the different kinds of wares, and had the receipts for the manufacture of them. It would be quite absurd, therefore, for the Court to proceed in the consideration of this question upon the ground that Alpaugh and Magowan were wholly ignorant of the art, and that they were relying solely on the judgment and skill of Wood and Barlow.

The propriety, applicability and importance of the foregoing remarks will be more and more manifest as a few of the well considered acts of Alpaugh and Magowan are taken into the account. The speech and conduct of the parties during the ordinary progress of events which they are interested in and have the control of are of infinitely more value in ascertaining the truth than what may be insisted upon by them as conclusions of fact in the midst of an

excited legal controversy. From this standpoint, I think, the evidence shows, beyond the possibility of refutation, that Wood and Barlow were good, practical potters, and that they proved themselves so to be while in the employ of Alpaugh & Magowan. I now submit what I refer to.

July 25th, 1884 (more than a year after the contract had been signed), Magowan wrote to one of their agents in Detroit, saying: "I am pleased to learn you sold several bills in Cleveland, and hope you will succeed in making sales to new trade for our light imperial china; for, as you are aware, these are the goods, and the only goods, we propose making or selling. We do not care to have sales for granite or C. C. goods pushed at all. Make as many sample sales of hotel china as possible, for we are confident wherever these goods get into the hands of first-class houses they will appreciate the quality, workmanship, etc., and favor us with a continuance of their trade."

August 11th, 1884, Alpaugh & Magowan wrote to the same agent, saying: "We beg leave to inform you that at a meeting of the firm yesterday it was decided to discontinue the manufacture of white granite and C. C. ware, and to devote our entire attention to the production of imperial china. * * * In accordance with our instructions you will, therefore, push the sale of imperial china, and secure all the orders you can."

In April, 1885 (after Wood and Barlow had been in their employ nearly two years under the contract), Alpaugh & Magowan issued to the trade a circular, in which they say: "Notwithstanding the enormous productive facilities of this pottery, we have been obliged to discontinue the manufacture of white granite and C. C. ware, and to confine ourselves exclusively to the production of our present leader, a high grade of extra quality, plain and decorated, thin porcelain dinner, tea and toilet ware, which we have named Imperial China. We claim for this imperial china a quality, durability and finish that is unrivaled. It is superior to any thin porcelain made in America, and fully equal in every respect to foreign importation, we make no exception. Our shapes and decorations have been conceded, by those who have made a comparison, to be the most perfect ever placed

upon the market. For beauty, symmetry and utility they are without a rival. * * * All we ask to prove the accuracy of these claims is a competitive test. * * * We are the only manufacturers in this country who back their goods with a warranty. We inclose a copy of this iron-clad document, which speaks for itself."

In May, 1885, Alpaugh & Magowan issued another circular to the public headed "Victory," in which they use the following language respecting the production of their works and of their managers, Wood and Barlow (who had now been in their employ for two years): "American sanitary earthenware, not only equal but superior to any of foreign manufacture, now being produced in the Empire Pottery. Competitive tests by the most prominent and practical experts of this country has verified this claim. The delusive arguments presented to the trade by certain inspectors of sanitary ware who are interested in foreign potteries should no longer be entertained by jobbers or dealers, for in America we not only have the finest clays and crude materials ever discovered, but the Empire Pottery has the same practical managers and the same experienced workmen who have been prominently identified with the largest and most prominent English sanitary ware potteries from boyhood, and bring to us the benefit of their long and valuable experience."

In another circular they say to the public: "Recollect, we are the only manufacturers who have proved, by actual test, that our ware is the best, both in quality, durability and finish."

And as late as November 5th, 1885 (only a short time before they were discharged), in a circular concerning the management of the Pottery, directed to Wood, Alpaugh and Magowan, say: "The good workmanship of the ware is to be maintained."

Certainly these defendants, Alpaugh and Magowan, are too high-minded, honest and honorable to expect or think that any court would announce a decree which would be equivalent to convicting them of wilful misrepresentation in every one of the utterances by them above quoted. Inter-

est, duty, honor, required them to speak the truth then, and I feel it to be my duty to take them at their word.

But, it may be asked, if these defendants, Alpaugh and Magowan, be honest and honorable men, having made the foregoing statements and given them to the public, to induce merchants to buy of them, how do they excuse this resistance to the claims of Wood and Barlow under the contract? I have answered this question above, but renew the inquiry so that the exact point of conflict may not be lost sight of. The answer to the inquiry is (though not so expressed in the pleadings nor by any admission, direct or open), that notwithstanding all that was said in the circulars, the "Bone China," the "Vitrified China," and the "Underglazed Decorated Ware" were failures, and because these were such failures, the complainants, Wood and Barlow, have forfeited all right to the $2,000 each for each year during their service. I have endeavored to show that this contention cannot control. The quotations from the pen of Alpaugh and Magowan, given above, are irrefutable proofs that Wood and Barlow are good, practical potters, and that they did for Alpaugh and Magowan all the law required of them under the contract. In such case it is the duty of the employed to perform the duties incident to his employment, honestly, with ordinary care, and with due regard to his employer's interest and business; and it is implied that he is competent to discharge the duties for which he is employed, and that he possesses the requisite skill. *Wood on Mas. and Serv., sec. 83 and sec. 157; Parker* v. *Platt, 74 Ill. 430; Waugh* v. *Shunk, 20 Penna. 130; Page* v. *Wells, 37 Mich. 415, 421.* In this last case, Cooly, C. J., says: "Whoever bargains to render services for another undertakes for good faith and integrity, but he does not agree that he will commit no errors. For negligence, bad faith or dishonesty, he would be liable to his employer; but if he is guilty of neither of these, the master or employer must submit to such incidental losses as may occur in the course of the employment, because these are incident to all avocations, and no one, by any implication of law, ever undertakes to protect another against them."

I will only submit one other fact, which, I think, will immovably stand against the contention of the defendants, and that is, in 1884 (after Wood and Barlow had been managing for more than a year), Alpaugh and Magowan gave Wood and Barlow credit for the $2,000 and handed a statement to each to that effect. And in 1885, September 22d, Alpaugh and Magowan directed a like credit to be given to each of them, and a statement to each with a credit of $4,000.

I will advise a decree in accordance with these views. The complainants are entitled to costs.

DECREE.

[Filed December 15th, 1887.]

This cause coming on to be heard in the presence of James S. Aitkin, of counsel with the complainants, and G. D. W. Vroom and Barker Gummere, of counsel with the defendants, and the Court having heard the testimony of the respective parties and the argument of counsel thereon, and considered the same, and being of opinion that the complainants are entitled to the relief sought and prayed for by their bill of complaint; and that the said defendants should account to the complainants for the profits of the business of the manufacture of pottery, conducted and carried on by said defendants under the name of the Empire Pottery of the city of Trenton, during the time complainants were employed to superintend and manage the same by the agreement between them, dated the seventh day of May, eighteen hundred and eighty-three, to wit, from the twenty-first day of May, eighteen hundred and eighty-three, to the seventh day of July, eighteen hundred and eighty-six, and pay to said complainants ten per cent. of the net profits of said business; and that said defendants ought to be charged with the sum of two thousand dollars a year profits during said term, to each of the complainants, as

guaranteed to said complainants by said defendants in their agreement.

It is, on this fourteenth day of December, one thousand eight hundred and eighty-seven, by A. T. McGill, Jr., Chancellor of the State of New Jersey, ordered, adjudged and decreed, and the said Chancellor doth, by virtue of the power and authority of this Court, order, adjudge and decree that the said complainants are entitled to the account prayed in their said bill of complaint; and that the said defendants, Spencer M. Alpaugh and Frank A. Magowan, do come to an account to and with the said complainants, of all the dealings, transactions and business of the manufacture of pottery conducted and carried on by the said defendants, known as the Empire Pottery of the city of Trenton, from the twenty-first day of May, eighteen hundred and eighty-three, to the seventh day of July, eighteen hundred and eighty-six, to the end that the said defendants may be ordered to pay to the said complainants ten per cent. of the net profits of the said business of the said Empire Pottery during the said period of time.

And that it be referred to Charles J. Rutgers, Esq., one of the Masters of this Court, to take an account of said affairs, dealings, transactions and business of the said pottery during said period, and for the better taking of which account the said defendants are directed to produce before the said Master, upon oath, all books, papers, vouchers and writings in their custody or power, relating thereto, and are all to be examined as the said Master shall direct. And the said Master is directed to report specifically the amount of the net profits of the said business during the said period, and the amount due to the said complainants for their share thereof. And the said Master is further directed to report that, in case the said net profits of said business should not amount to such sum that ten per cent. thereof would realize to the said complainants the sum of two thousand dollars a year to each of them during said period, then that the said Master report how much is due to the said complainants respectively, from the said defendants, for their profits as guaranteed to them, at the rate of two thousand dollars per year to each of them during the time specified as aforesaid,

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between SPENCER M. ALPAUGH AND FRANK A. MAGOWAN, Appellants, and WILLIAM WOOD AND JAMES BARLOW, Respondents.	ON APPEAL, &c.

PETITION OF APPEAL.

[Filed March 6th, 1888.]

To the Honorable the Court of Errors and Appeals, in the last resort in all causes:

The humble petition of Spencer M. Alpaugh and Frank A. Magowan, the appellants in the above stated cause, respectfully shows that your petitioners find themselves aggrieved by a final decree made in the Court of Chancery by His Honor Alexander T. McGill, Jr., Chancellor of New Jersey, bearing date the fifteenth day of December, in the year eighteen hundred and eighty-seven, wherein the said William Wood and James Barlow were complainants and the said Spencer M. Alpaugh and Frank A. Magowan were defendants, in this respect, to wit, that the said decree adjudges that the respondents are entitled to the account prayed in their said bill of complaint; and that the appellants do come to an account to and with the said respondents of all the dealings, transactions and business of the manufacture of pottery conducted and carried on by the appellants, known as the Empire Pottery of the city of Trenton, from the twenty-first day of May, eighteen hundred and eighty-three, to the seventh day of July, eighteen hundred and eighty-six, to the end that the said appellants may be ordered to pay to the said respondents ten per cent. of the net profits of the said business of the Empire Pottery during the said period of time; and that it be referred to

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Charles J. Rutgers, Esq., one of the Master of the Court of Chancery, to take an account of said affairs, dealings, transactions and business of said pottery during said period, and for the better taking of which account these appellants are directed to produce before the said Master, upon oath, all books, papers, vouchers and writings in their custody or power relating thereto, and all to be examined as said Master shall direct; and that the said Master should report specifically the net profits of the said business during the said period, and the amount due to the respondents for their share thereof; and also to the direction to the said Master that he should report that in case the net profits of the said business should not amount to such sum that ten per cent. thereof would realize to the said respondents the sum of two thousand dollars a year to each of them during said period, then that the said Master report how much is due to the said respondents respectively from these appellants for their profits as guaranteed to them at the rate of two thousand dollars per year to each of them during the time specified as aforesaid, calculating the interest from the end of each year, when said sums were due to said respondents from the appellants. And your petitioners humbly appeal from that part of the decree of the Chancellor which decrees as aforesaid, upon the ground that the same is erroneous, for that the said decree ought to have adjudged that the said respondents were not entitled to the account prayed for in their said bill of complaint, to the end that the appellants should pay to them ten per cent. of the net profits of the business of the said Empire Pottery during the period set forth in the said decree; and further, for that the said decree directs a reference to one of the Masters of this Court to take an account of the said affairs, dealings, transactions and business of said pottery during said period, and that the said Master should report specifically the amount of the net profits of the said business during the said period, and the amount due to the respondents for their share thereof; and said decree is also erroneous, for that it directs the said Master to report that in case the said net profits of said business should not amount to such sum that ten per cent. thereof would realize to the said respondents the sum of two thou-

sand dollars a year to each of them during said period, that then the said Master should report how much is due to the said respondents, respectively, from the said appellants for their profits as guaranteed to them at the rate of two thousand dollars per year to each of them during the time specified as aforesaid, calculating interest from the end of each year.

Your petitioners, therefore, pray that the said decree of the said Chancellor may be, in the particulars aforesaid, reversed, set aside, and for nothing holden, and that your petitioners may have such relief in the premises as to this Honorable Court shall seem meet.

G. D. W. VROOM,
Sol'r and of Counsel with Appellants.

ANSWER TO APPEAL.

[Filed March 31st, 1888.]

The answer of William Wood and James Barlow, respondents, to the petition of appeal of the above named appellants:

These respondents, not acknowledging all or any of the matters, which in the said petition of appeal are contained, to be true, for answer thereto, nevertheless, say and admit that a decree was, on the fourteenth day of December, eighteen hundred and eighty-seven, made and entered in the Court of Chancery, in the cause for that purpose mentioned in the said petition, as is therein stated; but as to the substance and form thereof, these respondents pray to refer thereto when the same shall be produced.

And these respondents are advised and believe that the said decree, or part of the said decree, appealed from by the said appellants, is agreeable to equity, and they pray that the said decree, as appealed from as aforesaid, may be affirmed with costs to be adjudged to these respondents.

JAMES S. AITKIN,
Solicitor and of Counsel with Respondents.